

# Analyzing the Flexibility of Inclusionary Zoning: Should Affordable Units Be Built On-Site or Off-Site?

by

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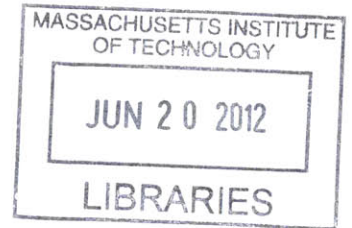
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## **ABSTRACT**

Inclusionary zoning (IZ), a strategy first adopted by municipalities in the 1970s to create affordable housing, requires private developers of market-rate residential projects to set-aside a certain percentage of units as affordable. The original intention of IZ was to foster socioeconomic integration in the nation's suburbs – but now, the tool has been adopted in urban areas, where threats of gentrification are more of a concern.

Often, developers are able to fulfill the obligations imposed by inclusionary ordinances through alternative means of compliance: namely, off-site construction of affordable units or fee payments in-lieu of construction. Such flexibility is the primary focus of this thesis: how flexible are cities in the ways developers are permitted to fulfill inclusionary requirements? What are the ramifications of flexibility? Should cities be more or less flexible?

My research has found good reasons for creating flexible inclusionary ordinances, beyond just protection from legal challenges. In-lieu fees can be used as gap financing for entirely affordable projects, which can be more beneficial to residents and low-income neighborhoods from a holistic community development perspective. Usually, this also results in production of a greater number of affordable units than on-site construction would have yielded.

However, flexibility should be subject to certain restrictions, with cities maintaining authority to approve the means of compliance. In-lieu fees must be set at a meaningful level, equivalent to the actual cost to develop a unit of affordable housing. Additionally, imposing geographic restrictions on off-site construction is a good way to balance the need to produce affordable housing while furthering socioeconomic integration at the neighborhood, rather than building, level. Evidence regarding the benefits of mixed-income developments for lower-income residents is still inconclusive, and the strategy fails to address the underlying structural causes that perpetuate poverty. Thus, IZ ordinances should not rigidly require on-site construction of affordable units.

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-- Rachel Alonso

*"Just remember this, Mr. Potter, that this 'rabble' you're talking about... they do most of the working and paying and living and dying in this community. Well, is it too much to have them work and pay and live and die in a couple of decent rooms and a bath? Anyway, my father didn't think so. People were human beings to him. But to you, a warped, frustrated old man, they're cattle. Well, in my book he died a much richer man than you'll ever be."*  
-- George Bailey, *It's a Wonderful Life*



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## 01. INTRODUCTION

### 1.1 WHY AFFORDABLE HOUSING?

Much like food, water, and air, shelter is a necessity for humans. Yet in the United States, housing is considered a private commodity and a vehicle for personal wealth accumulation. Despite previous efforts at government-supplied housing, the private sector continues to be the primary deliverer of housing. Thus, private developers are responsible for providing housing to individuals at all income levels, but this conflicts with the fact that larger, more luxurious units yield the greatest profits. There are a variety of other factors contributing to housing unaffordability, and cities continue to search for ways to house a low-wage workforce.

### 1.2 WHAT IS INCLUSIONARY ZONING (IZ)?

Inclusionary zoning is a strategy used by government, usually at the city or county level, to create affordable housing. Ordinances, which can be voluntary or mandatory, require developers of market-rate housing to set aside a certain percentage – typically between 10 and 20% – as restricted to households earning low and moderate incomes. Seen as another burdensome exaction by developers and unable to provide housing at a deep enough affordability by housing advocates, IZ has nonetheless become an increasingly popular tool in the face of declining federal funds and housing programs. The aspect of IZ this report focuses on is the flexible alternatives offered to developers to fulfill the affordable housing obligation, namely off-site construction and the payment of fees in lieu of construction. Why do cities offer alternative means of compliance? How does this change the outcome of IZ in terms of unit location and the amount of affordable housing produced? These questions and more will be explored in the following seven chapters.

### 1.3 WHY RESEARCH INCLUSIONARY ZONING?

I first began to reflect on inclusionary zoning while interning at the Los Angeles Department of City Planning between 2009 and 2010. My supervisor Patricia Diefenderfer was dismayed by the *Palmer* decision, which invalidated an inclusionary requirement in a neighborhood just west of our downtown office. The enormity of the situation and the potential trouble the case posed for California by setting an anti-inclusionary legal precedent stuck with me after I moved to Boston. In the summer of 2011, I interned with the Fenway Community Development Corporation, which was grappling with the

flexibility of Boston's Inclusionary Development Program. My thesis topic had already been chosen before I began this internship, but working in the Fenway neighborhood increased my awareness of the controversies surrounding in-lieu fees and where the money gets used. Thus, I narrowed my research focus to the flexibility of IZ ordinances.

Although there are few instances of research specifically regarding inclusionary zoning's flexibility, it is a crucial consideration for all ordinances. Typically, cities build flexibility into IZ as a way to provide protection from possible legal challenges against IZ, but it the type of flexibility, and the way it is crafted and enforced, plays a major role in how much – and where – affordable housing will be produced in a city. By examining the impacts and multiple IZ ordinances, and the terms of their flexibility, this thesis is contributing new details to the body of literature that already exists about IZ.

Typically, two alternatives to on-site construction are provided. The first, off-site construction, allows private developers to satisfy the affordable housing obligation by providing the units in a separate project; in other words, by building one market-rate project and another affordable project. The second option, in-lieu fee payments, allows developers to “buy out” of the obligation and pay fees instead of constructing affordable units. My research reflects these three separate approaches, but when I referred to “off-sites,” most of my interviewees interpreted it as the affordable projects that received funding from the in-lieu fee payments. Although many cities offer an off-site alternative, my interviews and data analyses indicate that few developers choose this option.

Exploring the flexibility of IZ challenged and ultimately changed my initial beliefs about the strategy. I viewed the typical 15% set-aside for inclusionary ordinances as ridiculously paltry; I desired stricter standards, with deeper income targeting and larger set-asides in order to create a meaningful amount of affordable housing for the neediest, most vulnerable populations. However, while researching and writing this report over the past year, I realized that traditional IZ ordinances function best as moderate-income housing production programs. Pragmatically, the creation of stronger IZ ordinances is precluded by the fundamentals of real estate returns and the political realities of modern power dynamics. Thus, the validity of IZ as a strategy for affordable housing for low- and moderate-income urban households is a question worth exploring, though largely beyond the scope of this paper – this concern will be briefly addressed in chapter 7.



Furthermore, I initially approached my research from an anti-flexibility viewpoint and felt strongly that locating affordable units on-site was necessary in order to achieve socioeconomic integration at a micro scale: individual buildings. However, I have come to see the validity of flexible alternatives, particularly in light of mixed results of and controversies surrounding income-mixing policies. Thus, I choose to justify flexibility in this report – under certain conditions, and subject to some restrictions. It is essential to design IZ ordinances so that the resulting amount of affordable housing is as meaningful as possible. This can be achieved through realistic in-lieu fees that reflect the true costs of constructing affordable housing, and geographic limits on off-site construction to create housing opportunities for people of all classes at a neighborhood scale.

Inclusionary zoning was first adopted in suburban jurisdictions as a way to provide access to opportunities for poor, minority populations confined to living in urban ghetto conditions. However, I am examining IZ as implemented in urban areas – specifically, Boston, Los Angeles, and San Francisco. Demand for housing in these cities is strong, and Boston and San Francisco face land constraints. Housing costs and property prices are increasing, due in part to the coastal location of these cities. The City of Los Angeles has struggled to implement a citywide inclusionary ordinance, stopping in the face of *Palmer*, the precedent-setting legal decision. Smaller municipalities adjacent to the City of Los Angeles, including Santa Monica, West Hollywood, and Pasadena, are examined as a comparison. San Francisco links Boston and LA: like Boston, San Francisco’s inclusionary ordinance was adopted more than a decade ago, but like the Los Angeles area, San Francisco faces issues related to the *Palmer* decision and the dissolution of the state’s redevelopment agencies.

I am analyzing IZ at a time of great cultural upheaval, particularly regarding a possible redefinition of ‘the American Dream.’ For decades, Americans viewed homeownership as a necessity and believed future generations would achieve greater success through the virtue of individual efforts. This traditional path to respectability is shattering due in part to the recent bursting of the speculative housing bubble and subsequent foreclosure crisis, rising economic inequality, structural economic and employment changes, and increasing personal indebtedness. These challenges to personal economic security are accompanied by rising rents in certain urban areas and the federal government’s budget crisis. Despite the recession and decline in home values across the country, affordable housing is still a pressing issue, particularly in cities.

## 1.4 RESEARCH QUESTIONS

The primary research question of my thesis is: do Boston, cities in the Los Angeles area, and San Francisco craft inclusionary zoning policies to incentivize on-site construction of affordable units or to facilitate delivery of affordable units through other means? To answer this, I developed a series of more specific questions:

1. What are the characteristics of the flexible alternatives offered in each jurisdiction? Are developers able to fulfill the affordable housing obligation by constructing the units off-site? Are developers permitted to pay fees in lieu of building affordable units? These questions are an attempt to discern the extent to which on-site construction is the default, preferred manner of delivering affordable units.
2. How have the flexible options changed over time? Have cities become more or less permissive in allowing developers to ‘buy out’ of constructing affordable units on-site? Why or why not? To understand current policy choices, it is essential to know how IZ ordinances originated and have since evolved.
3. How are the in-lieu fee payments calculated? Are more units required when this option is used? What do municipalities do with the collected funds? This will help reveal how meaningfully and effectively the in-lieu fees are used to create affordable housing.
4. Do these jurisdictions provide any benefits to developers to offset the costs of providing affordable housing? Most suburban IZ ordinances featured such concessions. Answers to this question can reveal the perceived strength of local housing markets and the level of profits private developers earn.
5. At what scale is affordable housing prioritized through the IZ policies? More specifically, do municipalities prioritize affordable housing at the building, neighborhood, or city scale? What are the spatial impacts of flexibility? This illustrates whether urban ordinances in the twenty-first century have maintained the original social integration intent of suburban IZ, or are focused more on production of units, regardless of location.
6. How have IZ ordinances been affected – if at all – by recent macroeconomic and legal forces, such as:

- The bursting of the speculative housing bubble, economic recession, and changes in lending standards
- The Palmer decision
- The dissolution of California's redevelopment agencies

## 1.5 RESEARCH METHODS

Armed with the above research questions, I developed a standard list of questions to ask each of my interviewees. Questions were slightly modified to reflect the professional experience and/or location of each person; for a sample list, please refer to Appendix A. Between December 2011 and March 2012, I interviewed 24 individuals, a list of which can be found in Appendix B.

My research uses qualitative methods, and my interviewees were not selected based on a random sample. I contacted people I knew with ties to Boston, Los Angeles, and San Francisco and asked for recommendations of individuals knowledgeable about IZ. I also maintained a list of relevant organizations in each city and reached out to employees. At the end of each interview, I asked for recommendations of other people to speak to about inclusionary zoning, which proved to be a successful strategy for securing interviews later in the process. Ultimately, I spoke with 11 people in Boston, 7 from the Los Angeles area, 4 in San Francisco/the Bay Area, and 2 who had experience within California in general.

The next chapter provides a historical understanding of how inclusionary zoning was developed in response to the exclusive nature of traditional zoning. It details the structure of a typical IZ ordinance and the current need for affordable housing given rising housing costs coupled with declining public funds. Chapter 3 lays out the arguments in favor of and against IZ as an affordable housing strategy in general and flexible alternatives in particular. The following three chapters examine the evolution of IZ ordinances and justifications for varying levels of flexibility in Boston, the Los Angeles area, and San Francisco. Chapter 7 analyzes the results of my research and provides recommendations for crafting effective IZ ordinances. The report concludes with Chapter 8, a summary of my findings.





## 02. THE NEED FOR INCLUSIONARY ZONING

The terms *inclusionary housing* and *inclusionary zoning* tend to be used interchangeably in both literature and practice. In fact, many of my thesis interviewees simply used the word “inclusionary” to refer to the policy. However, scholars such as Alan Mallach, writing in 1984, have differentiated the two.<sup>1</sup> Inclusionary zoning is a strategy wherein *localities* require or encourage private developers of market-rate housing to set aside a certain percentage of units as affordable to low- and moderate-income households. Inclusionary housing, on the other hand, refers to the variety of programs used by *states* to increase the supply of affordable housing; inclusionary zoning is an example of one such strategy. Thus, individual cities, such as Boston and San Francisco, have inclusionary zoning policies in place, while examples of inclusionary housing include Chapter 40B in Massachusetts and SB 1818, California’s Density Bonus Law. This report focuses on inclusionary zoning, or IZ for simplicity’s sake.

### 2.1 THE ORIGIN OF LAND USE ZONING

Zoning is a tool that defines permissible locations for different land uses, such as residential, commercial, and industrial. As there are no centralized land use planning policies in the U.S., zoning falls under the purview of individual states rather than the federal government. This is established through states’ police power, or the constitutional right to establish and enforce laws to protect the general welfare, morals, health, and safety of residents. In practice, most states use specific enabling acts to authorize local governments to zone land. Throughout the nineteenth century, urban development was not regulated, and houses, stores, and factories were built according to private decisions. In 1916, the first comprehensive, citywide zoning code was established in New York City. Before this, Los Angeles established a Resident District Ordinance in 1908 to keep industrial uses away from residences, and Boston established height zoning in 1904.<sup>2</sup> The 1926 Supreme Court case *Village of Euclid, Ohio v. Ambler Realty Company* upheld the constitutionality of zoning on the grounds that regulation of building development was essential for promoting public health.

By separating land uses deemed to be incompatible, zoning has been both celebrated and criticized for preventing neighborhood change. Advocates favor zoning for protecting property rights and ensuring separation of obnoxious uses, such as industrial factories and residences. Real estate interests, not just homeowners, supported zoning and land subdivision in order to create predictable, and thus more attractive, patterns of development.<sup>3</sup> Ironically, some members of the development community now

see zoning as being too restrictive, an argument that shall be explored in the following chapter. Modern zoning codes can and do specify many issues beyond the use of land, including:

- Height limits
- Setback requirements (i.e., the distance between a physical structure and the front, back, and side property lines)
- Floor Area Ratio (FAR) requirements (establishes the relationship between the volume of a structure and the area of its site)
- Parking allowances – minimum or maximum
- Sign regulations

## 2.2 EXCLUSIONARY ZONING

In a way, zoning is inherently exclusionary, as it forbids specific land uses from locating in certain geographic areas. The notion of *exclusionary zoning*, however, was born alongside 20<sup>th</sup> century suburbanization. As World War II and the Great Depression ended and America became economically prosperous and optimistic again, many individuals and families moved from urban centers to less dense suburbs, followed eventually by jobs. This out-migration was fueled by new methods of home finance and facilitated by federal highway spending and construction of the interstate highway system. These trends have been chronicled by scholars such as Kenneth Jackson, in his seminal work *Crabgrass Frontier: The Suburbanization of the United States*.<sup>4</sup> Between 1950 and 1980, the country's suburban population nearly tripled, reaching 102 million, or 32 million more people than lived in central cities.<sup>5</sup> There were clear class and economic distinctions between cities and suburbs: one-third of urban households fell below the national poverty line, while one-fifth of suburban households did the same. Poverty was accompanied by racial differences; by the end of the 1980s, African-Americans made up 12% of the country's total population, but only 6% of its suburban population.<sup>6</sup>

A multitude of problems resulted from this suburban exodus, often referred to as *white flight* because people living in poor, minority communities did not experience the same mobility.<sup>7</sup> Zoning in the suburbs ensured housing costs remained high, while discriminatory lending practices, known as redlining, and deed restrictions with racial covenants also prevented African-Americans and other minorities from moving out of urban ghettos. Redlining and disinvestment also accelerated the decline of land values in central cities. As white, affluent people left cities, urban municipalities faced financial difficulties stemming from shrinking tax bases. Without an affluent – aka white – population, cities were burdened with financing both municipal services and services for the poor. White flight also



created an increasingly racially segregated educational environment. In sum, the outmigration of the white middle-class to suburbia created a vicious cycle of decline for central cities and their poor, minority populations.

The history of racial inequality in the United States has left a long and difficult legacy for current and future residents to grapple with. From the 3/5 compromise of 1787, which counted slaves as three-fifths of a person when determining political representation, to the 1896 Supreme Court Case *Plessy v. Ferguson*, which upheld the constitutionality of racial segregation of public facilities under the notion of “separate but equal,” the U.S. had a history of legally sanctioned racism long before exclusionary zoning. Before land use zoning codes became widespread, Americans’ residential patterns reflected racial discrimination. For instance, Louisville, Kentucky had an ordinance that prohibited the sale of property to African-Americans, which the U.S. Supreme Court declared an unconstitutional violation of the 14<sup>th</sup> Amendment in 1917. Exclusionary zoning can be seen as a mid-twentieth century continuation of these past actions.

In the mid-twentieth century, economic and racial exclusivity became manifested in suburban zoning codes, which were often designed to maintain or increase property values. Many of the zoning strategies now labeled exclusionary contributed to housing unaffordability for low-income households. Little land was designated for multi-family dwellings, and minimum requirements regarding lot sizes, lot frontage, and floor area limited population densities. These and other requirements guaranteed that housing would be comparatively expensive, and were implemented to address voters’ fears that less-expensive housing would decrease the market value of all homes in the community.<sup>8</sup>

Though zoning is typically considered to only address the physical attributes of land, all zoning has implicit socioeconomic effects. James C. Clingermayer notes that while “all zoning is exclusionary...exclusionary zoning has substantial impacts upon certain categories of people, not just upon particular sorts of buildings and uses of real estate.”<sup>9</sup> Thus, inclusionary zoning explicitly integrates social equity goals into local land use planning, which can be seen as emblematic of larger changes within the planning profession itself.<sup>10</sup> As Paul Davidoff argued in 1965, “The city planning profession’s historic concerns with the physical environment had warped its ability to see physical structures and land as servants to those who use them. Physical relations and conditions have no meaning apart from the way they serve their users.”<sup>11</sup> IZ was an attempt to better meet the needs of lower-income populations by acknowledging and working to eradicate the discriminatory nature of zoning in the past.

## 2.3 INCLUSIONARY ZONING

Inclusionary zoning is a strategy to attain a more even distribution of affordable housing through space by creating heterogeneous housing typologies for varying income levels in individual communities. City or county governments pass ordinances establishing IZ, which places an obligation on private, market-rate real estate developers to build – and thus subsidize – affordable units for residents with incomes below specified ceilings. If developers do not comply, they will not receive project or permit approval. Affordable housing is not the only type of public good that developers have been required to provide – other items, such as sewers, parks, and schools, have also been financed or constructed by private entities. An **impact fee** is when a local government charges developers the cost of providing public services and infrastructure for new developments. **Exactions** are a similar concept, referring to local government requiring developers to “dedicate land or construct or pay for all or a portion of the costs of capital improvements needed for public facilities as a condition of development approval.”<sup>12</sup> Exactions, impact fees, and inclusionary zoning all add up as development and permit costs, which discourage housing production.

The U.S. Supreme Court has defined the constitutionality of exactions in two cases. The 1987 *Nollan v. California Coastal Commission* established the “essential nexus” requirement, which means that government must prove the connection between the public interest (in this case, preserving views of the ocean) and the condition imposed upon permit approval. Additionally, in 1994, the court declared in *Dolan v. City of Tigard* that to be legal, an exaction must be roughly proportional to the burden imposed on the public by the project. In other words, government must prove that the burden placed on private actors does not overcompensate for the externality caused by private action.

IZ has never been brought before the courts as a takings issue. However, developers are not satisfied with the rational nexus used by cities to establish IZ ordinances, so developers often see such ordinances as extortive. One of my interviewees, Paul Campos, of the Bay Area Chapter of the Building Industry Association, was particularly vocal about the justifications for IZ. In California, builders have had to pay development impact fees for a variety of public services, including childcare facilities, public art, schools, parks, and traffic mitigation.<sup>13</sup> In the Bay Area, the sum of such costs has reached as high as \$100,000 per unit built. These costs make it difficult to build housing that is affordable. In response to the 2009 Palmer court case, cities in California have begun to solicit nexus studies, an issue which shall be explained in further detail in chapter 6.



In 1971, Fairfax County, Virginia created one of the first IZ ordinances – only to have it struck down by the state Supreme Court two years later. Certain areas, such as New Jersey and Montgomery County, Maryland have long-established IZ ordinances. Montgomery County’s Moderately Priced Dwelling Unit ordinance was enacted in 1974 and is particularly noted for its success; as of 2001, nearly 11,000 units had been created.<sup>14</sup> In 1975, the New Jersey Supreme Court mandated in *Southern Burlington County N.A.A.C.P. v. Mount Laurel Township* (also known as the *Mount Laurel I* case) that local governments had to establish methods to meet a “fair share” of their regional housing needs. In the 1983 case *Mount Laurel II*, the court enhanced their previous decision through a “builder’s remedy” which allowed developers to threaten litigation if a local government denied approval for a project containing affordable housing.

California is also well known for its inclusionary housing efforts. In 1994, there were 64 inclusionary housing programs in the state. By 2003, the total had increased by 67%, reaching 107 ordinances. Four years later the total was 170, an increase of nearly 60%.<sup>15</sup> The Non-Profit Housing Association of Northern California estimated that between January 1999 and June 2006, 29,281 affordable units were created in the state as a result of inclusionary housing policies. This is impressive, though compared to the yearly average number of units – 17,000 – attributed to the federal Low-Income Housing Tax Credit (LIHTC) program, which also targets a deeper level of affordability, it is not surprising that IZ is not considered to be the ultimate solution for the nation’s housing affordability problem.

In 2005, Anthony Downs calculated the amount of time it would take a mandatory, nationwide inclusionary zoning ordinance to meet the housing needs of the 22 million households who paid more than 30% of income.<sup>16</sup> Applying a 20% set-aside to 1.46 million (the average number of housing starts in the U.S. between 1990 and 2003), it would take 75 years to meet the need. It would take 151 years if a 10% inclusionary requirement were used. David Rusk calculated this differently: if the country’s 100 largest metropolitan areas were covered by an IZ ordinance with a 10% set-aside and a minimum project size of 10 units, 80% of new construction would trigger inclusionary requirements. The 21.8 million units constructed between 1980 and 2000 would have triggered construction of an additional 2.6 million inclusionary units, which is twice the number built under the LIHTC program and equivalent to 40% of the affordable housing need in these areas.<sup>17</sup>

The structure of an individual IZ policy is important, as evidenced by the inconsistent impacts different jurisdictions have experienced. IZ ordinances must be designed with specific consideration to individual housing markets. For instance, what is the availability and cost of developable land? Is demand strong enough to avoid creating a deleterious effect on the marketplace? IZ tends to be located in affluent jurisdictions, where active housing markets can be better leveraged to create affordable housing. However, regardless of market strength, IZ will always be vulnerable to economic cycles; if market-rate housing is not being produced, then no affordable units will either.

IZ ordinances can be **mandatory** or **voluntary**. Voluntary programs are structured around the belief that by offering adequate incentives, developers will readily choose to build affordable housing. Mandatory approaches supplement – or in some cases, replace – the carrot for a stick, and require all projects above a minimum threshold (five or ten units, for example) to fulfill an affordable housing obligation. The cities examined in chapters four through six have mandatory IZ ordinances.

The percentage of market-rate units that must be **set aside** as affordable is one of the most basic elements of an inclusionary ordinance. The most commonly used set-asides are between 10% and 20%, which is usually too small to fully meet a jurisdiction's affordable housing needs. Unfortunately, if affordability requirements are too stringent, IZ programs may eliminate developers' profits and prevent new projects from going forward, thus precluding the development of any new housing, whether affordable or not.

Most programs set **affordability thresholds** as a range of Area Median Income (AMI) percentages, with variation for family size. AMI is calculated by the U.S. Department of Housing and Urban Development (HUD), and usually includes metropolitan regions, rather than individual cities. As an example, Table 2-1 provides hourly wages, annual income levels, and maximum monthly housing costs for a family of three with one employed adult at various income levels. These numbers are based on California in 2006, when the state's minimum wage was \$6.75. The maximum monthly housing costs were calculated according to the accepted measure of housing affordability, 30% of household income. If a household pays more than that, they are living in unaffordable housing.



**Table 2 - 1: Income Classification and Maximum Monthly Housing Cost for a Household in California in 2006**

Income Classification	Hourly wage	Annual income	Maximum monthly housing cost
Moderate Income (80-100% AMI) <i>example: 96%</i>	\$34.70	\$72,221	\$1,806
Low Income (50-80% AMI) <i>example: 65%</i>	\$23.60	\$49,085	\$1,227
Very Low Income (30-50% AMI) <i>example: 38%</i>	\$13.80	\$28,792	\$720
Extremely Low Income (< 30% AMI) <i>example: 24%</i>	\$8.80	\$18,295	\$457

Source: *Affordable by Choice: Trends in California's Inclusionary Housing Programs* (Non-Profit Housing Association of Northern California, 2007)<sup>18</sup>

Controversially, most IZ ordinances serve a moderate- to low-income population. The deeper the level of affordability required, the larger the gap between the price of market-rate and subsidized units, and the larger the economic loss faced by developers. Many municipalities offer incentives to reduce this profit loss and bridge the gap between market-rate and affordable units. The most commonly offered incentive is a **density bonus**, which allows developers to build more units overall. In this way, profits from the additional market-rate units can reduce the economic loss resulting from subsidized units.

Some inclusionary zoning programs allow developers to use different (i.e., cheaper or less luxurious) materials and finishings when constructing affordable units. While this can enhance the economic feasibility of mixed-income housing projects, too many material distinctions may lead to differentiation and stigmatization of the inhabitants of the subsidized units. Dispersal of the affordable units throughout a development is often required to avoid such stigmatization and identification of lower-income households.

One of the more controversial aspects of IZ are **resale controls**, which determine the length of time that below market-rate units must remain affordable. Without such controls, the affordable units built under inclusionary programs have a short existence and will disappear from the market. Furthermore, the initial buyers benefit from windfall profits upon sale on the open market, at a price higher than originally paid.

However, resale controls conflict with the country's primary housing policy: homeownership. Owning one's home is a common way to accumulate wealth, but resale controls limit the amount of equity a household may accrue. Both liberal and conservative arguments have been made against resale controls. Low- and moderate-income households benefiting from inclusionary income-restricted units are less able to achieve social mobility via accumulated equity. Downey and Taylor of *The Washington Post* note how self-perpetuating this is: low-income households are excluded from homeownership because of their lack of accumulated wealth, but most Americans accumulate wealth primarily through homeownership.<sup>19</sup> Meanwhile, resale controls have been seen as an affront to many Americans. Embroiled in the Cold War when IZ ordinances were first adopted, an increase in government control raised the specter of communism for many. For example, in 1980 an anonymous secondary mortgage market official was quoted as saying "Once we do this [accept resale controls], God knows what will happen. This is a very dangerous precedent and I am going to fight it as far as I can. It's time for all to stand tall or we might as well live in Russia."<sup>20</sup>

Of course, resale controls only apply to for-sale projects – and early IZ ordinances were primarily applied to large suburban subdivisions of single-family homes. This report, however, is an examination of the application of IZ to urban areas, which tend to have a larger stock of rental properties. In these cases, deed restrictions can be used to mandate the length of affordability for apartments.

**Linkage**, developed in the 1980s, is a strategy similar to inclusionary zoning, but targeted to urban areas rather than the suburbs. Linkage was developed in a different context than IZ: central cities did not practice exclusionary zoning, but they did face pressure due to rapid development and gentrification. As Alterman explained in 1989, linkage programs are less concerned with socioeconomic integration and more with the quantitative production of housing.<sup>21</sup> Two of the first cities to adopt linkage policies in the 1980s were Boston and San Francisco.

Under linkage, developers of office and commercial projects are required to pay fees to mitigate negative impacts of development. The justification is that new office development leads to new jobs, which increases the demand for nearby housing. Without new housing construction, price increases will result – to avoid this, developers are required to fund housing. San Francisco's Office/Housing Production Program (OHPP) determined the exact housing contribution according to the square footage of an office development and an assumption about how much housing demand was generated for every new job. The OHPP was not implemented to specifically create affordable housing, but the city incentivized the construction of affordable units.<sup>22</sup>



This report examines neither linkage policies nor suburban inclusionary zoning policies. The IZ ordinances examined in the following chapters can be seen as a kind of hybrid between the classic suburban model of IZ and linkage policies, both of which form the foundation for twenty-first century inclusionary zoning. It was not until the 1990s that major cities in the U.S. began to turn to IZ to produce workforce housing.

## **2.4 THE CURRENT NEED FOR IZ**

IZ ordinances were initially established in suburban areas in the 1970s. An abundance of social, cultural, and financial changes have occurred in the subsequent three decades, and the popularity of IZ has increased over time. In 2009, the Center for Housing Policy estimated that more than 300 jurisdictions across the U.S. had created an IZ ordinance.<sup>23</sup> Approximately half of these were established in the 1990s, while one-third were adopted in the prior two decades.<sup>24</sup> This section shows the reasons why large urban municipalities have embraced IZ as an affordable housing strategy.

### **2.4.1 Economic Segregation**

While IZ was originally envisioned to combat racial segregation, as the twentieth century progressed, economic segregation increased. In 2000, 85% of the country's population lived in an area that was more segregated by income than in 1970.<sup>25</sup> Advances in economic integration should result in racial integration too, as many minorities are disproportionately poor. As David Rusk stated in his keynote remarks at the National Inclusionary Housing Conference in 2005, "Jim Crow by income is steadily replacing Jim Crow by race."<sup>26</sup> Urban poverty has persisted due to economic restructuring, differential treatment of minorities by law enforcement and the justice system, as well as underinvestment in urban public schools. Furthermore, as racial discrimination in housing and mortgage lending decreased, middle-class minorities were increasingly able to flee urban areas for the suburbs.<sup>27</sup>

Previous distinctions between cities and suburbs are also declining, and the 2010 U.S. Census revealed that the two are converging demographically. In the 2000s, the number of poor people in metropolitan America expanded by 5.4 million – more than 2/3 of which happened in the suburbs.<sup>28</sup> Does this mean suburban areas became more racially integrated, or that more Americans, regardless of race, became poorer? If IZ was originally designed to open up the suburbs for minority populations, what role can it play in the twenty-first century, where

access to suburban housing and employment is less of a challenge? How is the suburbanization of poverty reconciled with simultaneous economic segregation? It might be useful to compare the geographic scales used by these two reports.

### 2.4.2 Housing Unaffordability

Many people are unable to close the gap between their income and the cost of housing. This is in part due to economic restructuring, which includes the loss of unionized manufacturing jobs and the rise of neoliberalism and privatization.<sup>29</sup> As the price of housing has escalated and wages have stagnated, an increasing number of Americans struggle to afford housing. As of the 2000 Census, 22.3 million Americans (21.1%) suffered from a housing affordability problem. Housing is more unaffordable for low-income households, 53.6% of whom paid more than 30% of their income for housing. The smaller renter population has a larger share of people facing housing affordability burdens, as seen in Table 2-2 below. As renters are more likely to have lower incomes than owners, the results of Table 2-3, which demonstrates that higher income households are less likely to face housing cost burdens, should unfortunately be no surprise.

Table 2 - 2: Housing Unaffordability by Tenure Type (2006-2010)

	Owners	Renters	All Tenure Types
Number of people with monthly costs more than 30% of household income	23,103,371	17,937,957	41,041,328
Total number of people	75,625,961	35,274,249	110,900,210
Percent	30.55%	50.85%	37.01%

Source: 2006 – 2010 American Community Survey<sup>30</sup>

Table 2 - 3: Housing Unaffordability by Income

Household Income	Percent Paying 30% or more of household income for monthly housing costs
Less than \$20,000	13.20%
\$20,000 to \$34,999	8.90%
\$35,000 to \$49,999	5.20%
\$50,000 to \$74,999	4.60%
\$75,000 or more	4.00%

Source: 2006 – 2010 American Community Survey<sup>31</sup>

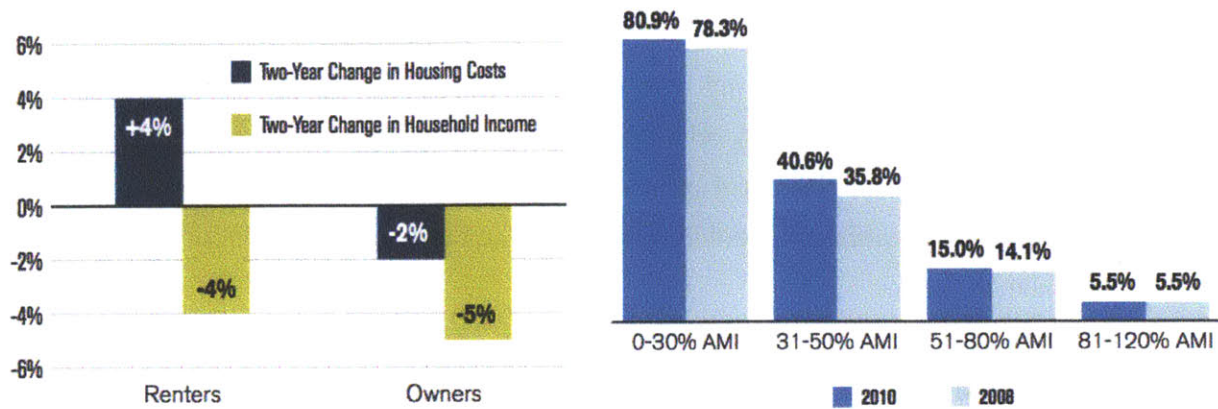
Coastal areas feature some of the most expensive housing markets in the U.S., and the three cities examined in this report, Boston, Los Angeles, and San Francisco, are coastal.<sup>32</sup> The state of California in particular has notoriously expensive housing. In 2007, 16 million Californians – 44% of the state’s population – paid a disproportionate share of their income for housing.<sup>33</sup> In 1992, the median resale housing price in the state was 190% of the national level.<sup>34</sup> This may be due in part to the state’s history of growth management efforts to protect localities’ environment, fiscal health, and lifestyle. As explained in the next chapter, limiting growth can increase housing prices.

According to the National Association of Realtors, the median sales price of a single family home sold increased 43.2% between 1999 and June 2004 – from \$133,300 to \$191,000 (in 2005 dollars). In California, home prices increased by 123.4% in the same time period. Between 1995 and 2002, median home prices rose by 65% in the San Francisco Bay Area and 54% in Boston.<sup>35</sup> Housing prices have increased at a faster pace than incomes, further exacerbating the unaffordability problem for both renters and homebuyers. Between 1970 and 1993, rents rose by 436% and home prices 723%, while incomes only rose 316%.<sup>36</sup> No wonder a housing bubble developed – families unable to earn high enough wages turned to housing to finance their lifestyles instead.

Despite decreasing home values stemming from the foreclosure crisis, housing affordability has worsened for both owners and renters. Between 2007 and 2009, HUD’s Worst Case Housing Needs Survey revealed a 20% increase for worst case needs.<sup>37</sup> For all households in the U.S., nominal income declined by 3% between 2008 and 2010.<sup>38</sup> Below, Figure 2-1 (left) shows that for working households – those that work at least 20 hours per week and have incomes no more than 120% AMI – housing costs for renters increased by 4%, while incomes declined by 4%. Costs for owners decreased by 2%, but incomes declined by 5%. Figure 2-1 (right) shows that the problem is worse for lower income households. Not only do more lower income households face cost burdens, but the share doing so increased more in two years than for households earning more than 50% AMI. States across the country are experiencing similar struggles, as displayed in Figure 2-2.

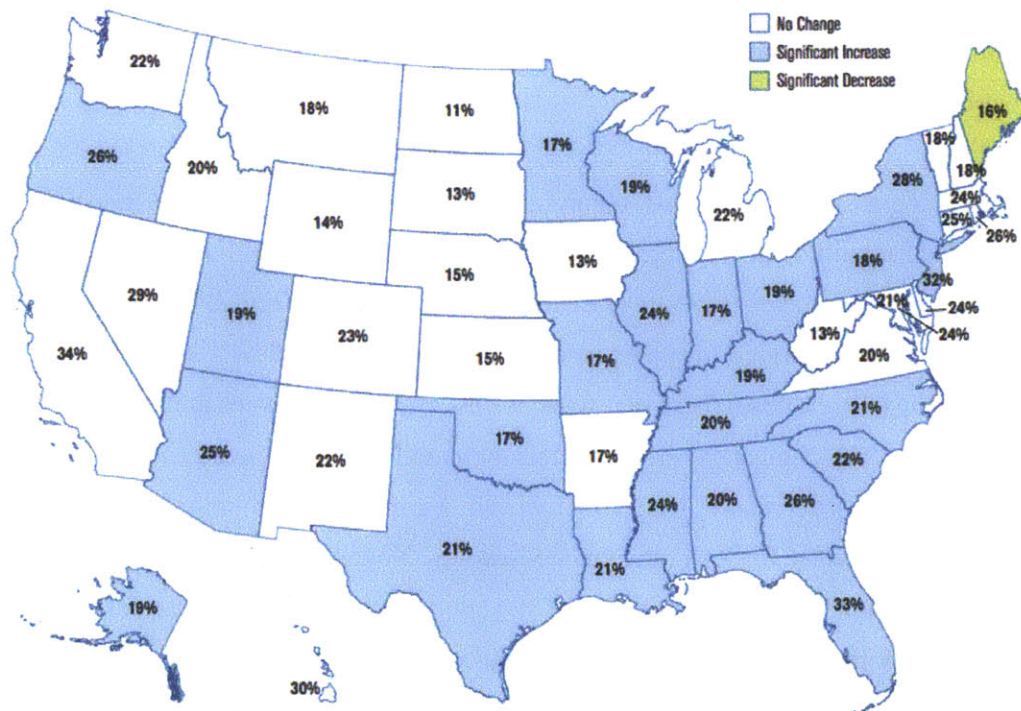


**Figure 2 - 1: Median Monthly Housing Costs and Percentage of Working Households with a Severe Housing Cost Burden**



Source: *Housing Landscape 2012* (Laura Williams, Center for Housing Policy)<sup>39</sup>

**Figure 2 - 2: Share of Working Households with Severe Housing Cost Burden by State, 2010 (Shaded by Change, 2008-2010)**

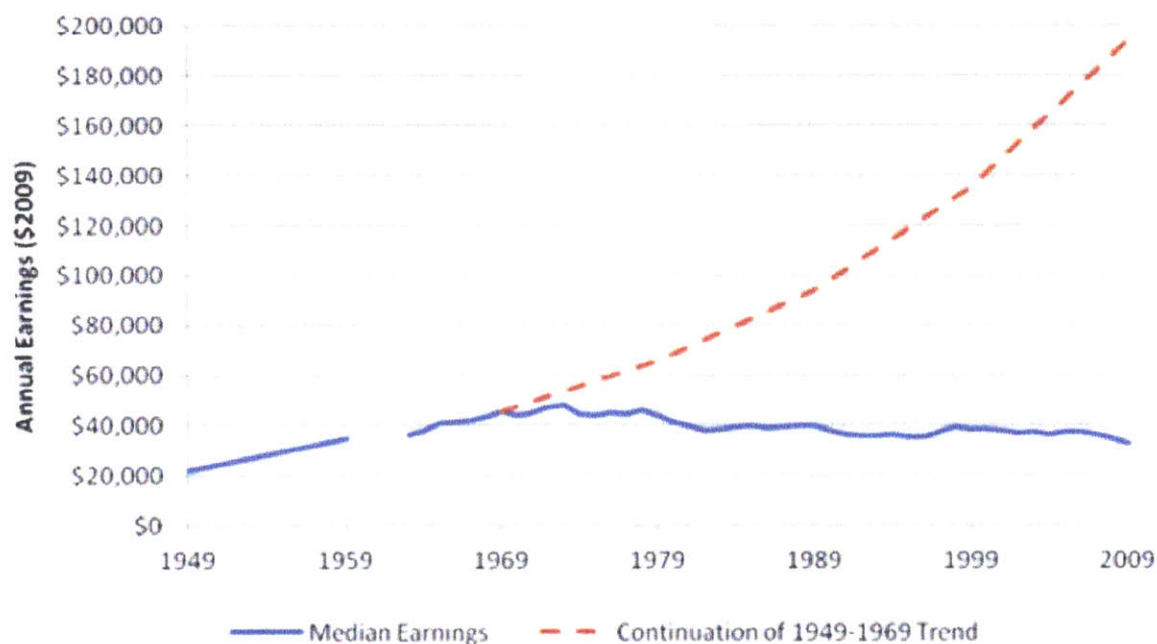


Source: *Housing Landscape 2012* (Laura Williams, Center for Housing Policy)<sup>40</sup>



Income stagnation is not a new phenomenon linked to the Great Recession – such trends began decades ago. The mid-twentieth century was a time of economic growth and great prosperity, but Figure 2-3 shows that beginning in 1969, median annual earnings for men stopped growing. The data only goes back so far as 1949, but it would be interesting to have a more complete depiction of wage growth in the country, including during the Great Depression and back into the industrial era of the nineteenth century; similarly, a comparison with wage growth for women would provide a more complete understanding.

**Figure 2 - 3: Median Annual Earnings for Men**

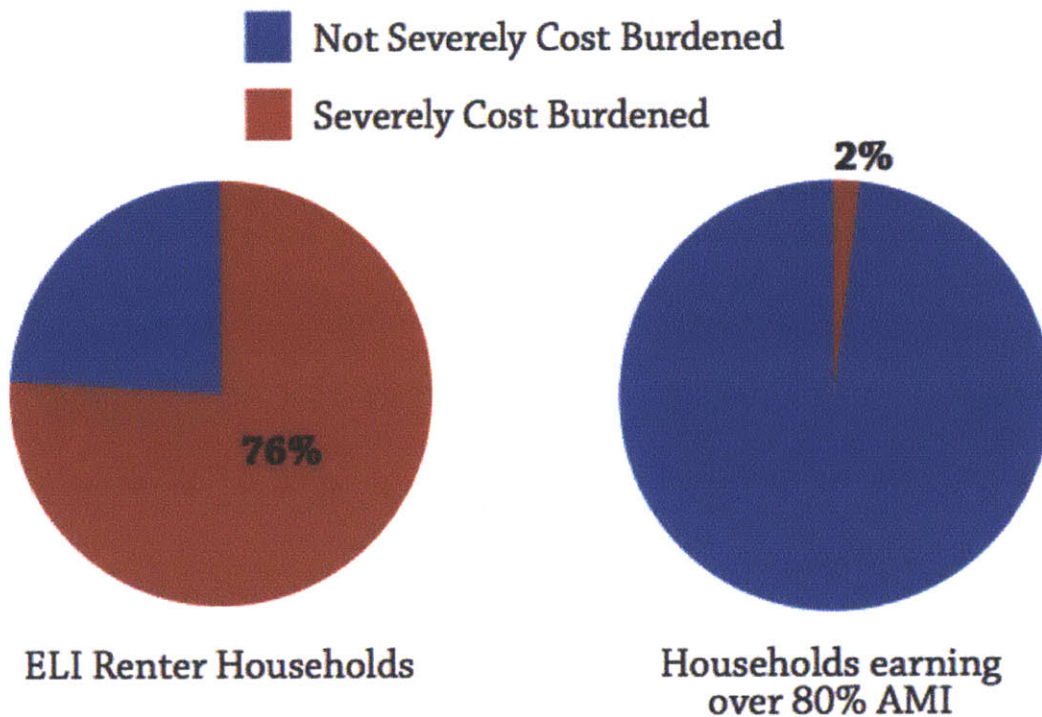


Sample includes men ages 25-64. Earnings data come from the Current Population Survey and the U.S. Census. Data on the institutionalized population come from the U.S. Census and the American Community Survey.

Source: Michael Greenstone, *the Hamilton Project*<sup>41</sup>

Lower income households have been harder hit by wage stagnation and decline than higher-income households: between 2007 and 2010, families in the bottom quintile experienced an 11.3% income decrease, while incomes for families in the top quintile decreased by 4.5%.<sup>42</sup> The National Low-Income Housing Coalition released a report showing the difference in housing cost burdens between extremely low-income renters and households earning more than 80% AMI. As seen in Figure 2-4, 76% of the former have unaffordable housing, while only 2% of the latter are similarly burdened.

Figure 2 - 4: Who Is the Most Severely Cost Burdened?



Source: *Housing Spotlight: The Shrinking Supply of Affordable Housing* (NLIHC, February 2012)<sup>45</sup>

### 2.4.3 Declining Public Funds

Despite the need for more affordable housing, government assistance has declined over time. In 1978, 7.5% of the federal budget was devoted to housing; by 2001, it was only 1.5%.<sup>44</sup> In the 1980s, the Reagan administration cut funding for many community development programs, including Community Development Block Grants (CDBG) and Section 8 housing construction. This signaled the beginning of a retreat from the responsibility for social issues championed by presidents such as Franklin D. Roosevelt, John F. Kennedy, and Lyndon Johnson.

The trend of reduced federal support for affordable housing continues today. In many ways, it is exacerbated by the current federal budget deficit and an increasing political conservatism. The federal government's current fiscal imbalances mean that housing programs are up for debate, and funding for domestic programs may experience significant cuts, despite the

growing need for rental assistance. For an example of how the allocation of CDBG funds to Boston has declined by 71% over twenty years, refer to Table 2-4.

**Table 2 - 4: Decline in Community Development Block Grants in Boston**

Year	CDBG funds received	Adjusted for inflation (to 2012 dollars)
1982	\$23,285,000 <sup>45</sup>	\$54,691,000 <sup>46</sup>
2001	\$25,638,000 <sup>47</sup>	\$32,830,000
2012	\$15,926,000 <sup>48</sup>	\$15,926,000

These trends have contributed to the growth of IZ programs, which reduce a locality's reliance on federal funds for affordable housing. IZ ordinances also serve to insulate jurisdictions from changes in political power and the associated funding variations. A 2008 report released by Homes for Working Families described the situation well by stating that IZ allows for "leveraging the resources of the private sector."<sup>49</sup> Municipal sources for affordable housing, such as linkage and IZ ordinances, are likely to play a more important role going forward due to declining federal and state funds and accompanied increase in competition for more limited sources.

Affordable housing in California received an additional blow recently when newly elected Governor Jerry Brown dismantled the state's approximately 400 redevelopment agencies (RDAs), which were established by law in 1945 and operated on \$5 billion in property tax revenues.<sup>50</sup> Redevelopment agencies, charged with improving blighted neighborhoods, often partnered with private developers – which was not always a popular strategy. Criticism against RDAs has included accusations of providing unnecessary subsidies for private activity that would have happened without public assistance. From a housing advocate's perspective, the timing could not be worse – the state is broke, the federal government is cutting back, private capital markets are not active, and construction lenders are unwilling to lend.

At the end of December 2011, the state's Supreme Court ruled in *California Redevelopment Association v. Matosantos* that it was legal for the state to dismantle its RDAs, and the 'pay to play' compromise, which would have required RDAs to make payments to continue operating, was illegal.<sup>51</sup> Affordable housing developers were already struggling to find funding during the



recession, and many worry that the lack of RDAs will further exacerbate this problem.<sup>52</sup>

Redevelopment generated approximately \$1 billion in affordable housing funds each year, the loss of which will be felt throughout California.<sup>53</sup>

#### **2.4.4 The Great Recession and cultural changes**

Cities are viewed as more hip and relevant to younger people, as evidenced by the cultural shift from films such as *Taxi Driver*, *Escape From New York*, and *The Warriors* to more celebratory movies and television shows like (500) *Days of Summer*, *Friends*, and *Sex and the City*. This sea change is one rationale for mixed-income housing developments as a way to allow newcomers to live in the city while minimizing gentrification, the displacement of lower-income residents by rising rents.

Owning a home has become symbolic of the American Dream, but has the recent bursting of the speculative housing bubble and mortgage crisis changed this for younger Americans? Millennials are more saddled with student loan debt – nearly \$1 trillion in aggregate.<sup>54</sup> These loans were taken out in part to achieve the American Dream, but repayment may prevent many from attaining what is traditionally seen as the epitome of that aspiration.

Homeownership rates among young adults have been declining for several decades. In 1973, 60.2% of 30- to 34-year-olds owned a home, while in 1990, only 51.5% did.<sup>55</sup> Between 1980 and 2000, the share of late-twentysomething homeowners declined from 43% to 38%, with the share of thirtysomethings dropping from 61% to 55%.<sup>56</sup> This can be attributed to a variety of other social and cultural changes, including delaying marriage and childbirth – single people tend not to buy homes – and the increased importance of higher education for career advancement.<sup>57</sup>

The U.S. real estate market is currently facing a problem of excess supply, both because more twentysomethings have moved back in with their parents, families double up with friends and relatives, and foreign-born household formation has slowed.<sup>58</sup> If the economy improves, more young people will be able to live on their own and form additional households. Future housing demand will also be shaped by the retirement of the baby boomer generation (born between 1946 and 1964) and the aging of Millennials (born between the late 1970s and the early 1990s).<sup>59</sup>

Despite the decline in home values associated with the foreclosure crisis and the Great Recession, housing affordability has worsened overall and pressures have moved up the income scale, as seen in Figure 2-5 below. According to *The State of the Nation's Housing 2011*, a report released by Harvard University's Joint Center for Housing Studies (JCHS), 19.4 million households – 9.3 million owners and 10.1 million renters – paid more than half their incomes for housing in 2009.<sup>60</sup> The foreclosure crisis distressed communities, decreased household wealth, and destroyed the credit rating of many borrowers. Income stagnation, combined with the loss of housing-related wealth, has increased the share of households devoting a disproportionate amount of income to housing.

**Figure 2 - 5: Affordability is Creeping Up the Income Scale – Share of Households with Cost Burdens (Percent)**



Source: 2001 and 2009 American Community Survey, *State of the Nation's Housing 2011* (Harvard JCHS)<sup>61</sup>

The JCHS reports that 19.4 million people (17.1% of households) pay more than half their incomes on housing. Renters are more affected than homeowners: in the first decade of the twenty-first century, the share of severely burdened owners increased from 9.3% to 12.4%, while the share of severely burdened renters increased from 20.7% to 26.1%.<sup>62</sup> Overall, between 2000 and 2009, real rents increased 8.9%, but real median incomes for households in the bottom income quartile fell by 7.1%. As renters are more likely to have lower incomes than owners, this explains why a larger share of renters is severely burdened by the cost of housing. Nearly two-thirds of low-income families with children paid more than half their incomes for housing in 2009. Below, Table 2-5 uses data from the JCHS to show how housing became unaffordable for an increasing share of households from 2000 to 2009, and how lower-income households are more likely to be burdened by the cost of housing than higher-income households.

**Table 2 - 5: Share of Severely Burdened Households by Income, 2000 and 2009**

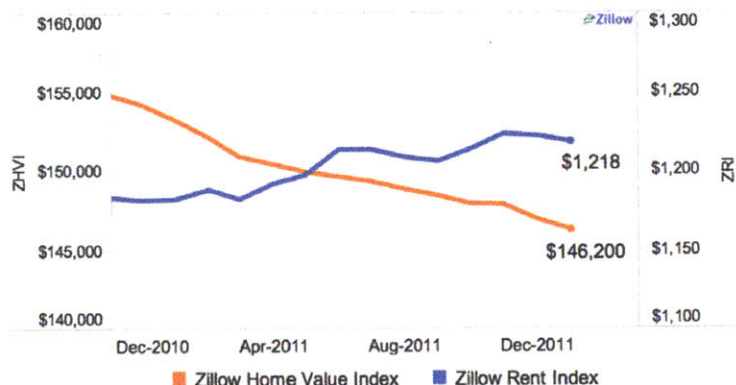
Household income	2000	2009	% Increase
\$15-30K	21.1%	27.7%	+6.6
\$30-45K	7.3%	11.5%	+4.2
\$45-60K	3.2%	6.4%	+3.2

Source: *State of the Nation's Housing 2011* (Harvard's Joint Center for Housing Studies)<sup>63</sup>

#### 2.4.5 Rental Market is Hot

Across the U.S., home values continue to decline, while apartment rents are rising. The real estate website Zillow released a graph, which can be seen in Figure 2-6, depicting these trends between December 2010 and December 2011. Interestingly, ten metropolitan areas in the country did not experience declining home values at this time; Boston, Los Angeles, and San Francisco are three of those ten.

**Figure 2 - 6: U.S. Zillow Home Value Index and U.S. Zillow Rent Index**



Source: *Newly Released Zillow Rent Index Shows Rental Markets Heating Up Nationwide, but Home Values Continue to Decline* (Stan Humphries, 3/12/12)<sup>64</sup>

For decades, the primary housing policy goal in the U.S. has been the expansion of homeownership; renters received less financial assistance than homeowners, and renting was seen as a subpar choice. However, estimates place the number of renter households at increasing by nearly 4 million between 2005 and 2010.<sup>65</sup> Demand for rental housing has recently been increasing, but it is unknown whether this is a long-term cultural shift or a short-term response to difficult economic circumstances. As explained above, many renters have



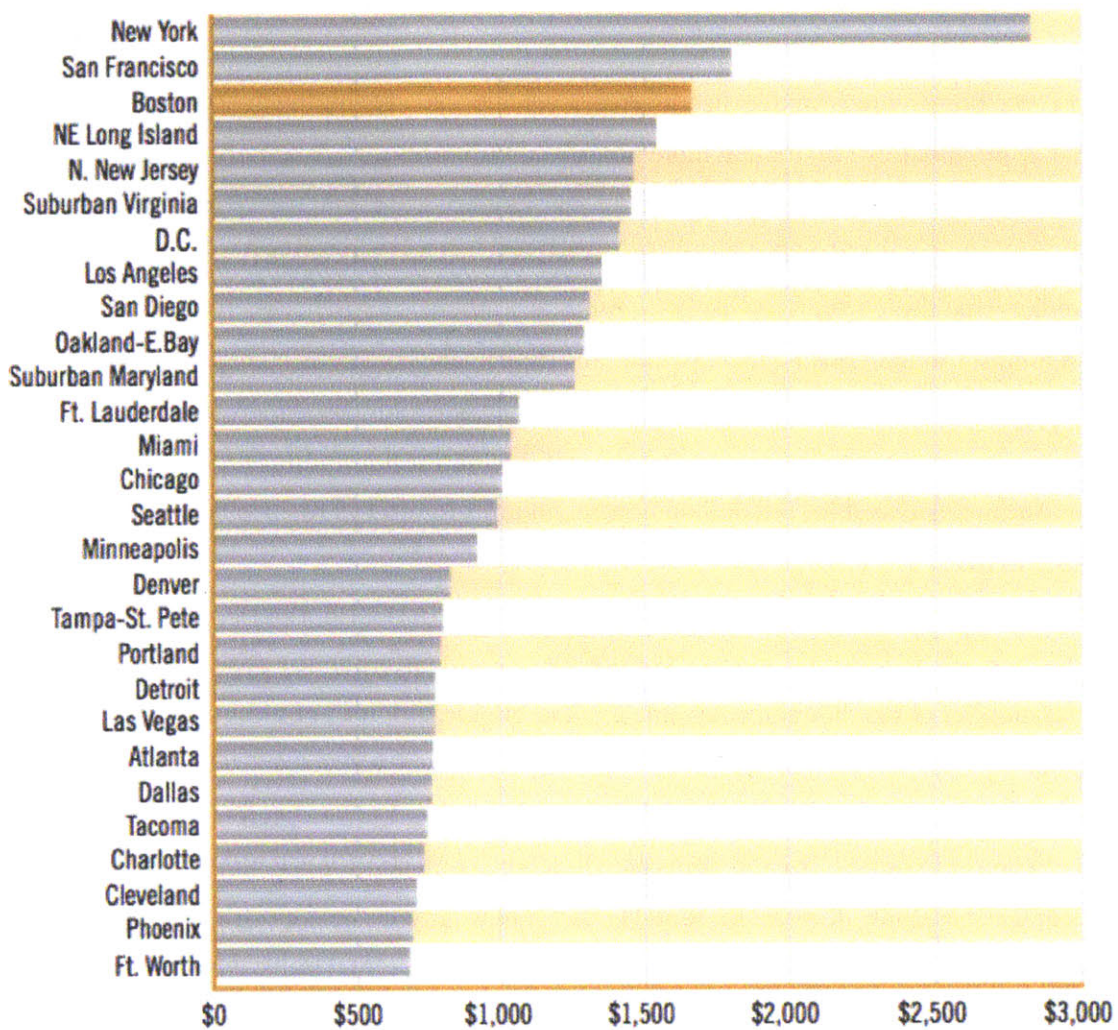
deferred homebuying, while the foreclosure crisis and high levels of unemployment have led many former owners to revert back to renting.

In 2004, homeownership reached its peak level of 69.4%. Dropping to 66% in late 2011 means that approximately two million more households are renting.<sup>66</sup> Across the United States, rents increased by 2.4% between January 2011 and January 2012, and the apartment vacancy rate (5.2%) is the lowest it's been in more than a decade.<sup>67</sup> *The State of the Nation's Housing 2011* predicts that these trends are likely to continue, as there is a gap between the time in which demand for rental housing increases and the time it takes the housing stock to increase and match the new demand.<sup>68</sup> The number of renter households could increase by as much as 470,000 every year over the next decade, and the National Low-Income Housing Coalition has estimated a need for 6.8 million new rental units for every low-income family to have a place to live.<sup>69</sup>

The increase in demand for rental housing exacerbates affordability problems in several ways. The number of very low-income renters – households with incomes less than 50% of AMI – increased from 16.3 million to 18.0 million between 2003 and 2009.<sup>70</sup> These households put pressure on a limited supply of affordable rental housing. Lower-cost rental units are also a challenge to maintain, because rents are often not adequate to cover maintenance costs. To meet the increasing demand for rental housing, new projects are being developed – however, new construction is usually more expensive than existing rental units, which serves to increase the average cost of rental housing overall. According to the JCHS, in 2009, the median cost of construction and land for units in multi-family structures was \$110,000, and median rent was \$1,067. However, to be affordable to the median renter (using the 30%-of-income standard), rents would need to be no more than \$775.

Figure 2-7 shows a comparison of 2011 rents across major metropolitan markets in the U.S. Two of the cities explored in this report are in the top five most expensive rental markets in the U.S.: San Francisco ranks second, and Boston is third. At eighth, Los Angeles is not far behind.

Figure 2 - 7: Effective Rents in Major Metropolitan Areas (2011:2Q)



Source: Reis, Inc. (Greater Boston Housing Report Card, October 2011)<sup>71</sup>

In summation, inclusionary zoning was developed in the 1970s as a remedy for suburban racial segregation and the disparate outcomes and access to opportunity it fostered. More recently, IZ has been established in urban areas as population shifts back towards cities, housing unaffordability has become an increasing problem, and the federal government has committed less funding for affordable housing. There are a variety of considerations made when an IZ ordinance is crafted, all of which can affect the policy's success. One such consideration is how flexible to make an ordinance – controversies surrounding this and other aspects of IZ are examined in the following chapter.



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<sup>12</sup> Brenda Appledorn, Ankersen, Thomas T., and Ruppert, Thomas, “Regulatory Incentives and Criteria to Preserve Recreational and Working Waterfronts: A Policy Menu for Florida’s Waterfront Communities -- Exactions and Impact Fees” (University of Florida Levin College of Law, n.d.), <http://www.law.ufl.edu/conservation/waterways/waterfronts/pdf/exactions.pdf>.

<sup>13</sup> Paul Campos, phone interview, February 13, 2012.

<sup>14</sup> Karen Destorel Brown, “Expanding Affordable Housing Through Inclusionary Zoning: Lessons From the Washington Metropolitan Area” (The Brookings Institution on Urban and Metropolitan Policy, October 2001), 2, [http://www.brookings.edu/~media/Files/rc/reports/2001/10metropolitanpolicy\\_brown/inclusionary.pdf](http://www.brookings.edu/~media/Files/rc/reports/2001/10metropolitanpolicy_brown/inclusionary.pdf).

<sup>15</sup> *Affordable by Choice: Trends in California’s Inclusionary Housing Programs* (Non-Profit Housing Association of Northern California, 2007), 2, [http://nonprofithousing.org/pdf\\_attachments/IHIREport.pdf](http://nonprofithousing.org/pdf_attachments/IHIREport.pdf).

<sup>16</sup> Anthony Downs, “Break Down Those Barriers,” *Planning* 71, no. 9 (2005): 23.

<sup>17</sup> David Rusk, “Nine Lessons for Inclusionary Zoning” (National Inclusionary Housing Conference, October 5, 2005), 2, <http://www.inclusionaryhousing.ca/wp-content/uploads/2010/01/ResourceUSRuskNIHC.pdf>, <http://www.inclusionaryhousing.ca/wp-content/uploads/2010/01/ResourceUSRuskNIHC.pdf>.

<sup>18</sup> Center for Housing Policy – 2006 National Housing Conference, as cited in *Affordable by Choice: Trends in California’s Inclusionary Housing Programs* (Non-Profit Housing Association of Northern California, 2007): 9.

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<sup>20</sup> Barbara Taylor, “California Government Moves Toward ‘Affordability’ Shelter Price Limits,” *Los Angeles Times*, August 10, 1980, pg J32, as cited in

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<sup>31</sup> “2006-2010 American Community Survey 5-Year Estimates - S2503. Financial Characteristics,” *American Fact Finder*, n.d., [www.census.gov](http://www.census.gov).

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<sup>33</sup> *Affordable by Choice*, 8.

<sup>34</sup> Nico Calavita and Kenneth Grimes, “Inclusionary Housing in California: The Experience of Two Decades,” *Journal of the American Planning Association* 64, no. 2 (1998): 150–170.

<sup>35</sup> John M. Quigly and Steven Raphael, “Is Housing Unaffordable? Why Isn’t It More Affordable?,” *Journal of Economic Perspective* (Winter 2004): 191 as cited in Benjamin Powell and Edward Stringham, “‘The Economics of Inclusionary Zoning Reclaimed’: How Effective Are Price Controls?,” *Florida State University Law Review* 33 (2005): 471.

<sup>36</sup> California Department of Housing and Community Development, “Comprehensive Housing Affordability Strategy” (Sacramento, CA: 1993) as cited in Calavita and Grimes, “Inclusionary Housing in California: The Experience of Two Decades.”

<sup>37</sup> “Out of Reach 2012: America’s Forgotten Housing Crisis” (National Low-Income Housing Coalition, March 2012), 1, <http://nlihc.org/sites/default/files/oor/2012-OOR.pdf>.

<sup>38</sup> Laura Williams, “Housing Landscape 2012” (Center for Housing Policy, February 2012), <http://online.wsj.com/public/resources/documents/Landscape2012.pdf>.

<sup>39</sup> *Ibid.*, 1–2.

<sup>40</sup> *Ibid.*, 3.

<sup>41</sup> Derek Thompson, “The End of Ownership: Why Aren’t Young People Buying More Houses?,” *The Atlantic*, February 29, 2012, <http://atmo4.theatlantic.com/business/archive/2012/02/the-end-of-ownership-why-arent-young-people-buying-more-houses/253750/>.

<sup>42</sup> D. Rohde, “Yes, we’re creating jobs, but how’s the pay?,” Reuters, January 5, 2012, <http://blogs.reuters.com/david-rohde/2012/01/05/yes-were-creating-jobs-but-hows-the-pay/> as cited in “Out of Reach 2012: America’s Forgotten Housing Crisis,” 3.

<sup>43</sup> *Ibid.*, 4.



<sup>44</sup> *Leading the Way I Executive Summary* (City of Boston, December 2003), ii,

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<sup>45</sup> Richard J Gallogly, "Opening the Door for Boston's Poor: Will 'Linkage' Survive Judicial Review?," *Boston College Environmental Affairs Law Review* 14, no. 3 (1987): 449.

<sup>46</sup> Coin News Media Group LLC, "U.S. Inflation Calculator," <http://www.usinflationcalculator.com/> (accessed March 8, 2012).

<sup>47</sup> *FY 2001 CPD Formula Program Allocations* (U.S. Department of Housing and Urban Development, n.d.),

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<sup>48</sup> *Community Planning and Development Program Formula Allocations for FY 2012 (state: Massachusetts)* (U.S.

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<sup>49</sup> Dustin C. Read, "Inclusionary Zoning: A Framework for Assessing the Advantages and Disadvantages" (Homes for Working Families, May 2008), 3, <http://ssrn.com/abstract=1373540>.

<sup>50</sup> David Zahniser and Jessica Garrison, "L.A. Assesses Costs of Shuttering Redevelopment Agency," *Los Angeles Times* (Los Angeles, CA, January 11, 2012), [latimes.com/news/local/la-me-redevelop-20120111,0,424152.story](http://latimes.com/news/local/la-me-redevelop-20120111,0,424152.story).

<sup>51</sup> James Brasuell, "CA Supreme Court Votes to Kill Local Redevelopment Agencies," *Curbed Los Angeles*, December 29, 2011, <http://la.curbed.com/archives/2011/12/ca-supreme-court-votes-to-kill-local-redevelopment-agencies.php>.

<sup>52</sup> Ron Nyren, "Abandoning Redevelopment: California's Big Experiment," The Urban Land Institute, *Urban Land*, January 19, 2012, <http://urbanland.uli.org/Articles/2012/Jan/NyrenExperiment>.

<sup>53</sup> Zahniser and Garrison, "L.A. Assesses Costs of Shuttering Redevelopment Agency."

<sup>54</sup> Vickie Elmer, "Dealing with Student Debt," *The New York Times*, April 29, 2012, New York edition, sec. RE6, <http://www.nytimes.com/2012/04/29/realestate/mortgages-dealing-with-student-debt.html>.

<sup>55</sup> Downey and Taylor, "A Home of Their Own."

<sup>56</sup> Thompson, "The End of Ownership: Why Aren't Young People Buying More Houses?"

<sup>57</sup> *The State of the Nation's Housing 2011* (Cambridge, MA: Joint Center for Housing Studies of Harvard University, 2011), 13, <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/son2011.pdf>.

<sup>58</sup> *The State of the Nation's Housing 2011*, 1; Alexander Eichler, "For Renters Who Need Affordable Housing, Choices Are Few," *The Huffington Post*, March 14, 2012, [http://www.huffingtonpost.com/2012/03/14/renters-affordable-housing\\_n\\_1343194.html](http://www.huffingtonpost.com/2012/03/14/renters-affordable-housing_n_1343194.html).

<sup>59</sup> *The State of the Nation's Housing 2011*, 12.

<sup>60</sup> *Ibid.*, 4.

<sup>61</sup> *Ibid.*, 5.

<sup>62</sup> *Ibid.*, 27.

<sup>63</sup> *Ibid.*, 27–28.

<sup>64</sup> Stan Humphries, "Newly Released Zillow Rent Index Shows Rental Markets Heating Up Nationwide, but Home Values Continue to Decline" (Zillow Real Estate Research, March 12, 2012), <http://www.zillow.com/blog/research/2012/03/12/newly-released-zillow-rent-index-shows-rental-markets-heating-up-nationwide-but-home-values-continue-to-decline/>.

<sup>65</sup> "Out of Reach 2012: America's Forgotten Housing Crisis," 2.

<sup>66</sup> Motoko Rich, "Homes Aren't Selling, but in Apartments, It's a Landlord's Market," *The New York Times*, February 25, 2012, New York edition, sec. A1, <http://www.nytimes.com/2012/02/25/business/homes-arent-selling-but-its-an-apartment-landlords-market.html?pagewanted=all>.

<sup>67</sup> *Ibid.*

<sup>68</sup> *The State of the Nation's Housing 2011*, 2–3.

<sup>69</sup> Eichler, “For Renters Who Need Affordable Housing, Choices Are Few.”

<sup>70</sup> *The State of the Nation’s Housing* 2011, 25.

<sup>71</sup> Barry Bluestone, *Greater Boston Housing Report Card*, October 2011, 45, [http://nuweb9.neu.edu/dukakiscenter/wp-content/uploads/2011\\_Housing\\_Report\\_Card.pdf](http://nuweb9.neu.edu/dukakiscenter/wp-content/uploads/2011_Housing_Report_Card.pdf).



## 03. INCLUSIONARY ZONING DEBATES

Since the strategy was first introduced in the mid-1970s, a variety of arguments have been made for and against inclusionary zoning. Unfortunately, much of the existing literature is theoretical in nature, as it is difficult to obtain good data on inclusionary programs. Thus, this chapter deals more with academic theories than empirical studies.

### 3.1 SOCIAL BENEFITS

IZ was envisioned as a way to achieve racial and economic integration by ‘opening up the suburbs’ to the poor, minority households previously excluded from living there. It was promoted as a way to increase geographic housing choice, move people out of ghetto conditions, and achieve a general jobs/housing balance. Furthermore, IZ would provide more job opportunities for lower-income individuals, thus enhancing their ability to be upwardly mobile. This was premised on the suburbanization of jobs and an assumption that being more proximate to neighbors of a higher class would result in new knowledge of different job opportunities. Urban joblessness and social isolation have been attributed to a lack of exposure to middle-class role models and social networks, a circumstance IZ sought to remedy by increasing such exposure.<sup>1</sup> By de-concentrating poverty, IZ would also create a fairer geographic distribution of the associated fiscal and social costs for municipalities and society as a whole.

By reducing the racial and economic segregation of education, IZ also allowed children from low-income families to access high-performing, suburban public schools. In *Affordable Housing: An Evaluation of Inclusionary Housing Programs in California*, Seymour I. Schwartz and Robert A. Johnston identified a 1965 report by the U.S. Office of Education and a 1972 study by Christopher Jencks, both of which illustrate that minority children have improved educational performance when their classmates are more economically advantaged.<sup>2</sup> A recent report from the Metropolitan Policy Program at the Brookings Institute concurs that low-income students benefit from attending higher-scoring public schools, which are usually attended by middle- and upper-income students. Jonathan Rothwell, the author of the study, connects school test scores and housing costs: in the country’s 100 largest metropolitan areas, higher-scoring public schools are located in areas with higher housing costs – on average 2.4 times higher – than areas with lower-scoring schools.<sup>3</sup> The study also finds that large metropolitan areas with less restrictive zoning have smaller housing cost gaps; Rothwell recommends reducing instances of exclusionary zoning specifically to lower the income-related gap in school test

scores. However, it is not clear if these patterns would persist if the scale was decreased to the city-level, instead of entire metropolitan areas.

By reducing social attachment between groups, sociologists have hypothesized that residential segregation is self-perpetuating.<sup>4</sup> In other words, rich children who grow up in affluent neighborhoods will be less likely to favor redistribution as adults. Thus, by increasing interactions between different income groups, IZ was assumed to improve prospects for the poor in the long-term, in ways other than the location of housing. *All in Together*, a 1972 study released by the Massachusetts Housing Finance Agency, surveyed residents of mixed-income developments and found that behavior needed to change before attitudes would, so “reversing opposition to mixed-income housing was only possible by creating models of integration.”<sup>5</sup> The study found that the satisfaction of residents in market-rate units was determined by the project’s design, construction, and management, while the economic and racial characteristics of their lower-income neighbors left them feeling indifferent.<sup>6</sup> Carol Baldassari, writing about IZ in metropolitan Boston, cites developers’ fears of the marketability of mixed-income housing developments to purchasers of market-rate units. Sellers claim that the market-rate units next to affordable units sell slower because buyers do not want to live in close proximity to subsidized families.<sup>7</sup> Examples such as this provide a case against overly flexible IZ ordinances, assuming these economic and social benefits can be realized through on-site construction of affordable units. The reality of these claims is further examined in section 4 below.

### **3.1.1 Who is served by IZ?**

IZ typically assists low- and moderate-income households. In an era of shrinking housing assistance funds, some people disagree with IZ as a strategy for this very reason, because it misallocates scarce resources away from the neediest households. Ingrid Gould Ellen of NYU’s Furman Center for Real Estate and Urban Policy summed up the dilemma well in 2011 when she asked, “How much are we willing to pay to create diversity? When you have a lot of need, should you put all the resources on serving the very neediest? Or should you have a broader approach, one that includes the upper middle class?”<sup>8</sup> As discussed in chapter 5, this issue was one of the reasons the City of Los Angeles could not reach consensus on a citywide IZ ordinance.

To counter the argument against IZ because of its target population and high income limits, both scholars and my interviewees frequently stated that IZ is not a “panacea” for a community’s housing needs. Rather, it should be viewed as one of many tools localities can use



to promote affordable housing development. When considered as part of an overall strategy of affordable housing production, the ability to deliver housing that meets a continuum of incomes – rather than market-rate housing for the most affluent and subsidized units for very low-income households – is an argument in favor of assisting moderate-income households.

Several of my interviewees touted the ability to create a continuum of housing offered at a variety of income levels as one of the benefits of IZ, due to the need for moderate-income housing production. Noah Maslan of the non-profit Urban Edge pointed out that in Boston, the Housing Authority serves the city's very lower-income population with public housing, and the Department of Neighborhood Development serves people in the 50-80% AMI range. Lower-income residents undeniably need the most housing assistance, but housing affordability is creeping up the income ladder.

Similarly, Peter Cohen, the Executive Director of San Francisco's Coalition of Community Housing Organizations, views IZ as an essential regulatory tool if the city is ever to meet the housing needs of a diverse income range.<sup>9</sup> In San Francisco, most affordable housing is delivered to households at or less than 60% AMI, because tax credits and public funds have specific income restrictions. Land in the city is so scarce, and demand is so high, that the only way housing as a commodity can be priced at lower levels is to engineer it. There is no production system to deliver housing to moderate-income people; there is a barbell, where non-profit developers build housing for extremely and very low-income households, and market-rate developers build expensive, luxury projects.

Joe Kriesberg, President of the Massachusetts Association of Community Development Corporations (MACDC), concurs that it is not bad public policy to target a municipal policy to create housing affordable for households earning incomes between 80 and 120% AMI, since federal money is restricted to households at less than 80 or 60% of AMI. For instance, the LIHTC can be considered the 800 pound gorilla in the affordable housing room, sucking up all other resources that are needed for leverage; tying up so many resources in the 50 to 80% AMI range is bad policy, because there are people outside of that range who also need help with housing.<sup>10</sup> From a community development perspective, it is desirable to have tools that create more income tiers within the system. Strong communities need to have all kinds of residents at various incomes. Otherwise, asked Noah Maslan, where are workers going to come from?<sup>11</sup> Additionally, Mr. Maslan noted that the development cost for moderate-income units in



certain neighborhoods can be higher than rent levels – in other words, the market cannot support construction of housing at all income levels.

### 3.2 CONSTITUTIONAL CONSIDERATIONS

Legal scholars have also debated IZ; the U.S. Constitution has not established an individual right to housing, and IZ has been accused of being unconstitutional. One of the primary constitutional challenges to IZ is that it is a “taking” of private property by the government, a violation of the Fifth Amendment, which forbids the taking of private property for public use without just compensation. Such arguments have been made in the literature only; no IZ ordinance has been legally challenged according to this line of reasoning. Through IZ, governments prevent individual real estate projects from generating their full return potential – but to qualify as a taking, the *full* economic value would need to be taken away. However, scholars such as Daniel R. Mandelker argue that the purpose of zoning is not to allow developers to earn a profit, and the Virginia courts are the only legal entity to have agreed that IZ is a takings issue thus far.<sup>12</sup> In 1971, the Virginia Supreme Court declared Fairfax County’s IZ ordinance unconstitutional because zoning was only to be concerned with physical characteristics, not socioeconomic objectives.

IZ ordinances are often crafted with these legal challenges in mind. In fact, flexibility, or the allowance of alternative means of compliance, is commonly considered an important ‘escape clause’ to reduce legal vulnerability.<sup>13</sup> Additionally, the provision of incentives and compensation by municipalities in exchange for the affordable units help to negate accusations that IZ represents an unfair taking of developers’ property. Meanwhile, the ‘builder’s remedy’ established in New Jersey under *Mount Laurel II* is a solution that bypasses another legal issue: legislatures give jurisdictions the authority to zone land, and the judiciary is limited from legally requiring zoning modifications. *Mount Laurel II* did not dictate how localities were to zone their land, but it did empower developers to seek permission of the courts to develop unpopular projects that defied local zoning. Chapter 40B in Massachusetts is another example of a ‘builder’s remedy,’ as it empowers developers to circumvent local ordinances.

### 3.3 ECONOMIC ARGUMENTS

Economic arguments abound against IZ, particularly that it is inefficient and a disincentive to development. A 2004 study by Benjamin Powell and Edward Stringham for Reason Public Policy Institute, a libertarian think tank, showed that permit counts decreased in cities that introduced IZ.<sup>14</sup> Additionally, using data on housing prices and starts in California from 1988 to 2005, Bento et al. found the effects of IZ to be an increase in multi-family housing, an increase in the price of single-

family homes, and a decrease in the size of single-family homes. However, the statistical analyses yielded a “small and statistically insignificant effect” on single-family housing starts, a “small and statistically insignificant positive effect” on multi-family housing starts, and only a “significant effect” on the share of single-family housing starts.<sup>15</sup> The price effects were found to be larger in high-priced markets.

In contrast, research released in 2010 by Vinit Mukhija found little evidence that IZ was responsible for housing production at the local level, instead placing responsibility on regional and local trends.<sup>16</sup> Government incentives, such as density bonuses, lower the financial burden of building affordable units. A 2002 report for the City of Los Angeles by David Paul Rosen & Associates found that most development project typologies remain financially feasible when faced with an inclusionary requirement offset by at least one incentive package.<sup>17</sup> The study surveyed other California cities with inclusionary requirements, and found no negative effects on housing production. Rather, annual housing starts were found to be connected to unemployment levels and passage of the 1986 Tax Reform Act.

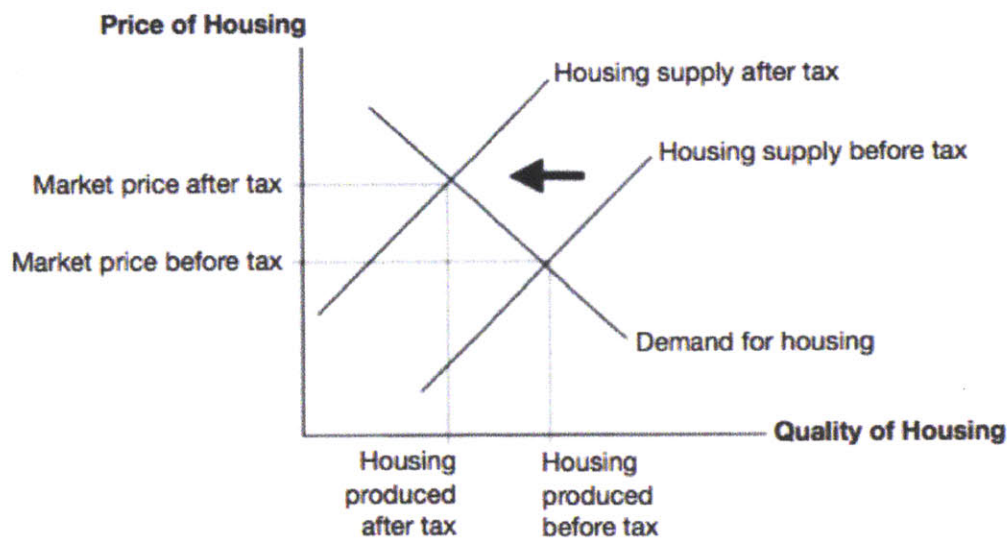
Developers are likely to pass costs onto other parties in order to maintain their required rate of return, so the total cost to subsidize all of the affordable units with a development will be born by a combination of the developer, market-rate homebuyers or renters, and landowners. Many scholars, including Dustin C. Read, have argued that the distribution of costs among each party will depend on the elasticity of demand.<sup>18</sup> Economic logic dictates that landowners will bear more of a burden if demand for housing in the jurisdiction is elastic, and buyers are willing to exercise greater choice about location. On the other hand, if landowners have more options regarding what use to put their land to, more of the costs will be passed on to the market-rate buyers and renters.<sup>19</sup> Mallach predicts that in the long run, landowners will bear most of the costs of inclusionary ordinances.<sup>20</sup>

Proponents of IZ believe the extra costs are justified because otherwise, landowners reap unfairly earned profits that derive from public investments and government decisions, rather than individual actions. More recently, Mallach, writing with Nico Calavita, contrasted the differing opinions about land value recapture in the U.S. and Europe: “many Europeans hold a long-standing belief that increases in land value result largely from society’s efforts, and therefore do not belong to the landowner. Rather the increased value should be recaptured by the public sector.”<sup>21</sup> Such beliefs about land value recapture are not as widely held in the U.S., which adds to the controversial nature of IZ.



Another controversy is that IZ is argued to be a disincentive to development because increasing housing prices will decrease the supply of land available for housing. Builders will be driven away to nearby areas without costly IZ ordinances, and landowners will be less likely to sell their land for residential uses, as the land will command a lower price. This will result in a smaller housing stock in communities, and subsequently, the price of that housing will be increased. Powell and Stringham note the ironic nature of this: IZ ultimately exacerbates the very problem it tries to solve.<sup>22</sup> IZ is often considered to essentially be a tax on development, and Figure 3-1 illustrates that a community's overall housing supply will decrease due to the tax-like nature of IZ. Bento et al. propose supply will decrease because the provision of subsidized units increases the cost of housing development in general. To mitigate this cost increase, developers will charge more for market-rate housing and be discouraged from producing more housing. If less housing is produced, but demand stays the same, the price of market-rate units will increase. Unfortunately, the authors are considering a community's overall housing market, rather than acknowledging market segmentation for market-rate and affordable units.

Figure 3 - 1: The Economic Effects of Inclusionary Zoning



Source: "Housing Market Effects of Inclusionary Zoning (Bento, 2009)"<sup>23</sup>

In economics, the Tiebout theory states that people 'vote with their feet' when choosing where to live – in other words, parents who value schools will live in jurisdictions that have high taxes for education, and households without children will live in jurisdictions with lower taxes for education. Applying to similar logic to a developer facing IZ, if profits are too low, developers are predicted to develop in less-regulated jurisdictions to avoid the costs of inclusionary ordinances. This is one reason why IZ ordinances tend to survive in affluent, desirable communities – unique urban areas, like Boston, San



Francisco, and Los Angeles. The production of affordable units is contingent on new market-rate development activity, so this strategy will be ineffective in weak markets or in jurisdictions which lack available sites.<sup>24</sup>

Powell and Stringham also argue that IZ makes market-rate homes more expensive. According to economic theory, if the price of a good is artificially lowered, a higher quantity will be demanded. In a pure market system, supply would subsequently increase to meet this demand. However, in reality, developers cannot build enough to meet this demand, resulting in a few select families benefitting from the subsidized units created through IZ, the rest suffering because they do not receive a subsidized unit, and the price of market-rate units increases.<sup>25</sup>

In 1982, Hagman theorized that government-offered incentives to offset the costs of IZ flow to landowners rather than preventing cost-increases for market-rate homebuyers.<sup>26</sup> Governments need to consider the distribution of cost burdens when designing an IZ ordinance. A developer's opportunity cost is dictated by the difference between the market rent and the affordable rent.<sup>27</sup> Read predicts that in a jurisdiction with a strong housing market, IZ will create many affordable units with a minimal impact on market-rate housing prices if the local government offers generous economic incentives to developers. On the other hand, a city with a weak housing market and an IZ ordinance offering few economic incentives is not likely to result in many affordable units. These arguments can be summarized below in Table 3-1:

**Table 3 - 1: Predicting the Effectiveness of an Inclusionary Ordinance**

	<i>Generous Economic Incentives</i>	<i>Few Economic Incentives</i>
<i>Strong Market</i>	<ul style="list-style-type: none"> <li>- Very Effective</li> <li>- Minimal Impact on Market Rate Housing Prices</li> </ul>	<ul style="list-style-type: none"> <li>- Moderately Effective</li> <li>- Significant Impact on Market Rate Housing Prices</li> </ul>
<i>Weak Market</i>	<ul style="list-style-type: none"> <li>- Moderately Effective</li> <li>- Minimal Impact on Market Rate Housing Prices</li> </ul>	<ul style="list-style-type: none"> <li>- Ineffective</li> <li>- Minimal Impact on Market Rate Housing Prices</li> </ul>

Source: "Inclusionary Zoning: Assessing the Advantages and Disadvantages" (Read, 2008)<sup>28</sup>

It is commonly put forth in the literature that private developers are unlikely to build affordable housing on their own initiative, and that they specialize in luxury housing because it is most profitable. However, developers cite overly burdensome government regulations as responsible for creating unaffordable housing; an oft-cited study by Malpezzi demonstrated that permit counts decreased and house prices increased in heavily regulated versus lightly regulated environments.<sup>29</sup> If the

development process was de-regulated, the overall supply of housing would increase, and prices would subsequently decline, making housing more affordable.<sup>30</sup> Thus, from the perspective of developers, IZ is exactly the opposite strategy municipalities should adopt to increase affordable housing. On the other hand, governments enact stringent land use regulations in reaction to strong housing demand and development activity.

For example, communities in California have enacted growth control measures to preserve environmental quality and avoid strains on infrastructure in the face of a limited ability to increase property tax revenue. Studies have shown, however, that such measures increase the cost of land by restricting the available supply. In 1980, the Urban Land Institute demonstrated that the price of land in San Diego increased by 269% in five years, compared with an average increase of 109% in twelve cities with fewer growth measures, such as Houston and Atlanta.<sup>31</sup> Though these measures are created with good intentions, such as environmental preservation, the consequences can be unintentionally exclusionary.<sup>32</sup> Developers point to growth control measures and similar regulations as creating and exacerbating housing unaffordability, and resent being coerced into solving a problem they did not create.<sup>33</sup>

Many scholars put forward the theory of filtering as an economically desirable method for passing on the housing stock from higher-income to lower-income households. New construction is expensive and better targeted towards higher-income households. When they vacate old units, theory dictates that lower-income households are then able to improve their own housing by moving into those newly vacant units. By creating new affordable units, IZ circumvents this natural process, creating economic inefficiencies. Tom Calahan of the Massachusetts Affordable Housing Alliance argues that this process breaks down in high-cost coastal markets such as Boston, where new development tends to be marketed to empty nesters or young professionals moving into the city.<sup>34</sup> Such population shifts are unlikely to free up many affordable units for families already living in the city.

### **3.4 INCOME-MIXING AS A HOUSING STRATEGY**

Through programs such as HOPE-VI and the Low-Income Housing Tax Credit (LIHTC), the U.S. Department of Housing and Urban Development (HUD) has been increasingly relying on a mixed-income approach to housing. Furthermore, the traditional goal of IZ is to achieve income mixing at the block, or building, level, but arguments exist debating the scale necessary to achieve the benefits of socioeconomic mixing – and the existence of such benefits at all. The crux of my argument regarding the flexibility of urban IZ ordinances rests on the lack of concrete evidence that socioeconomic mixing



at a small scale yields definitive and concrete benefits for lower-income populations. If the benefits are not certain, then flexibility is acceptable.

Scholars disagree as to what scale matters for income mixing – both in terms of community acceptance and associated benefits. Integration can occur at different levels, from the community to the neighborhood, block, and building. Sociological studies have indicated that socioeconomic mixing is acceptable at the community level, but not the neighborhood or block level. Furthermore, scholars such as Alan Mallach argue that as the geographic area becomes smaller, the benefits of integration become less certain.<sup>35</sup> Furthermore, Philip Oreopoulos had found that a child's neighborhood environment matters less than his or her household environment.<sup>36</sup> This lends support for not requiring mandatory on-site construction, as a child's household will be the same regardless of where the affordable housing is located.

An often-cited example of successful poverty de-concentration is Chicago's Gautreaux program, implemented in 1976. A court-ordered de-segregation, 5,000 families moved out of impoverished public housing projects and into suburban neighborhoods. Benefits cited later include higher earned incomes, a reduction in high school dropout rates, and a doubling of the number of children attending college. Analyses by scholars such as Ellickson and Cheshire of the HUD-funded Moving to Opportunity (MTO) program, which in the early 1990s relocated people from public housing in Baltimore, Boston, Chicago, Los Angeles, and New York, report that the teenage girls who re-located had better outcomes, but teenage boys fared worse than if they had stayed in public housing. Adults showed improvements in their mental health, but no differences in employment, physical health, or welfare dependence.<sup>37</sup>

Some scholars worry that lower-income families in mixed-income developments may feel isolated and have trouble forging ties with their more affluent neighbors. For instance, Loretta Lees cites research indicating that "at too local a scale, it [social mixing] can create tensions," and "proximity does not automatically create social mixing."<sup>38</sup> Furthermore, mixed-income projects run the risk of severing community ties. Lees sees benefits to segregation, because similar types of people living in the same neighborhood can better form support networks and other types of social capital. Similarly, Paul Cheshire sees a benefit to segregated neighborhoods, because individual neighborhoods can specialize in certain things, and "a larger number of specialized neighbourhoods provide a wider choice of urban community types and social settings in which to live."<sup>39</sup> By relocating poor households to more affluent neighborhoods, those households lose the support they previously had from living near services tailored



to their needs and other households like them – in other words, income-mixing strategies can decrease a form of welfare for poorer households.

Lees is critical of the international adoption of policies to encourage social mixing, because the language used in such policies, such as references to an urban renaissance or a revitalization, hides the class-based nature of the processes. Rather than diffusing the concentration of poverty to help the poor themselves, Lee sees such policies as a “neo-liberal formula of social mixing, that promotes gentrification” and are designed to increase municipal tax bases.<sup>40</sup> Many scholars agree that policies to achieve economic and social mixing address the symptoms, rather than the causes, of economic inequality. Susan Fainstein believes that “the argument for diversity can be carried too far, and it tends to lose sight of the continued importance of economic structure and the relations of production.”<sup>41</sup> Pursuing policies to increase diversity at the local level is not enough – the federal policy context matters as well for what happens locally. As Cheshire argues, “efforts to improve social equity would be more effectively directed towards people themselves rather than trying to force neighbourhoods to be mixed.”<sup>42</sup> Furthermore, “social segregation in cities must largely reflect economic inequality rather than causing it.”<sup>43</sup>

These arguments combine to create a crucial question for policymakers interested in developing IZ ordinances, as explored by Dustin C. Read: there is a need to “balance the importance of mixed-income development against the absolute need for affordable housing units.”<sup>44</sup> In the context of IZ, on-site construction will not solve the structural causes of economic inequality. This can be seen as support for flexibility, if building affordable housing in lower-income neighborhoods does not worsen conditions for lower-income households.

Urban planners and policymakers often fail to adequately gauge the opinions of the populations their plans impact. Do lower-income households want to live in the socioeconomically diverse buildings and neighborhoods IZ creates through on-site construction? A 1992 article by William A.V. Clark used data collected from a phone survey of Los Angeles residents to show that the four ethnic groups examined hold strong desires for living in neighborhoods populated by other people of their own race.<sup>45</sup> Furthermore, Erin Graves’s 2008 ethnographic study of Maverick Landing, a HOPE VI mixed-income development in East Boston, shows that “mixed-income communities operate within macrostructural realities of inequality,” and cannot remedy those realities. Graves’s research indicated that the residents of subsidized units took cues from things like decorations in the common spaces; by signifying specific middle-class values, the décor “subtly marginalized subsidized residents,” who

interpreted the aesthetics, as well as rules governing noise levels in the development, “as a code for class dominance.”<sup>46</sup> Such interpretations are not likely to successfully foster cross-class contacts. Even if lower-income households desired mixed-income housing, would their life conditions significantly and invariably improve? Evidence is inconclusive, as mentioned previously in terms of Chicago’s Gautreaux case and the Moving to Opportunity program.

A 2007 study by Mark L. Joseph et al. found that mixed-income housing developments create benefits for lower-income households in the form of greater informal social control and access to higher quality services.<sup>47</sup> However, the authors did not find that mixed-income housing improves social interaction, network building, or role modeling for lower-income households. Proximity of lower- and higher-income households within the same building does not guarantee relationships between economically diverse individuals, though this persists as a key rationale for mixed-income housing. Joseph et al. sees the concept of higher-income households acting as role models for lower-income households as “demeaning and paternalistic,” and find no evidence that such role-modeling even takes place.<sup>48</sup> The study concludes with a nice summation of the critique of mixed-income developments as a panacea for urban poverty:

“In terms of employment, the roles of macrostructural factors – the strength of the economy, the availability of accessible jobs for which residents are qualified and for which they will be fairly considered – cannot be influenced by simply relocating to a mixed-income development. In addition to these structural factors, fully addressing poverty among low-income residents of mixed-income developments will require serious investments in education, job readiness, training, and placement; attention to instrumental barriers such as transportation and substance abuse; and attention to more fundamental structural barriers that shape unequal access to opportunity.”<sup>49</sup>

Given the lack of clear evidence that mixed-income housing fosters social benefits for inhabitants of the income-restricted units, municipalities should not craft rigid IZ ordinances. Low-income families face many barriers in trying to escape poverty, including limited education, a lack of employment opportunities, and racism.<sup>50</sup> Unfortunately, research regarding the positive benefits of mixed-income housing has failed to prove such benefits, such as cross-class interactions and the existence of positive influences, exist.

### 3.5 LOCATION OF UNITS



The focus of my thesis is the location of affordable units and the validity of flexible alternatives. However, the body of literature written about IZ has tended to not focus exclusively on this issue.

Typically, developers have three primary methods for meeting their affordable housing obligation, with the default being to build the units **on-site**. Some ordinances also provide an **off-site** option, allowing developers to fulfill the affordable housing obligation in two projects: one purely market-rate, and the other 100% affordable. Finally, IZ ordinances also commonly allow developers to **pay fees in-lieu** of constructing any affordable units at all. Not every ordinance offers each option, and they tend to be designed to specifically incentivize and/or disincentivize different options. One flexible alternative that has been infrequently pursued is a credit program. Orange County, CA had a credit program, under which developers who provided more than 25% of their units as affordable accumulated credits for allocation to future projects of their own. These credits could also be sold to other developers, at a price negotiated between the two parties.<sup>51</sup> However, this option's success is largely due to its context: in the 1980s, there was a lot of development activity in the area, ensuring a market for the credits existed.

In general, flexible alternatives are a popular option in many inclusionary ordinances. For instance, the 57 inclusionary housing programs in the San Francisco Bay Area offer many buy-out options. More than two-thirds of jurisdictions have more than one option, and only 8 offer none. 77% allow for in-lieu fees, 70% allow off-site development, 38% allow developers to donate land instead of building units, and 16% offer transferable development credits. However, some jurisdictions do limit the amount of a project's total obligation that may be satisfied through buy-out options.<sup>52</sup> *Affordable by Choice*, a report released in 2007 by the Non-Profit Housing Association of Northern California, found that the 8 top-producing jurisdictions with inclusionary ordinances allow for increased flexibility. Specifically, the average number of units built on-site among all survey respondents was 58%, while it was 46% for the top-producing jurisdictions.<sup>53</sup> However, 6 of the 8 programs clearly indicated that alternatives are up to the jurisdiction's discretion, which communicates a commitment to identifying ways to balance the need for affordable housing with the financial considerations of developers.

Allowing for off-site construction or in-lieu fee payments is logical if there are site constraints, projects are isolated from commercial and transit services, or the project is a high-rise tower and the benefits will be too little compensation for the higher construction cost. Some inclusionary programs, such as Montgomery County, MD's and other jurisdictions near Washington D.C., have discretion over whether developers are permitted to buy out of the obligation. The onus is on the developers to



demonstrate a financial hardship stemming from satisfying the affordable obligation. Montgomery County has a history of rarely approving such requests: between 1989 and 1999, only 10 projects were allowed to buy out.<sup>54</sup>

Accepting financial contributions from developers in the form of in-lieu fees creates an obligation for municipalities to use the money exclusively for affordable housing development.<sup>55</sup> Creating housing trust funds during the suburban era of IZ ordinances was controversial, as smaller jurisdictions often lacked the technical prowess to spend the money. For instance, *Affordable by Choice* reported that approximately half of the jurisdictions in California with IZ that have collected in-lieu fees have not allocated the funds – a total of \$219 million.<sup>56</sup> This does not appear to be a concern in Boston, Los Angeles, and San Francisco, which feature active non-profit housing developers. Another issue with in-lieu fee collection is that most jurisdictions do not keep the fees separated from other housing funds, preventing municipalities from accurately tracking how the money is used and making it difficult to analyze the option's effectiveness.

In-lieu fees tend to be used to leverage additional funds, provide gap financing for affordable projects, fund homeless shelters or homelessness assistance, as rent subsidies, special need or transitional housing, land acquisition, rehabilitation, or new construction, or provide deeper affordability. For instance, Mukhija found that West Hollywood, which is adjacent to the City of Los Angeles, provided gap financing from in-lieu fees and other housing funds for the West Hollywood Community Housing non-profit to develop 224 affordable units.<sup>57</sup> Pasadena loaned \$1.3 million to The Trademark Project and gave \$1 million for Heritage Square to purchase land; combined, this \$2.3 million in in-lieu fees created 128 affordable units.<sup>58</sup> This represents a contribution of \$17,000 per unit, illustrating the primary benefit of using in-lieu fees as leverage: creation of more affordable units. It is not possible to determine how many on-site units Pasadena gave up in exchange for this \$2.3 million, as the city's in-lieu fees are on a square-footage basis and vary by project size and geographic subarea of the market-rate project.

Despite the benefits of in-lieu fees, opposition still exists. The Non-Profit Housing Association of Northern California feels “the in-lieu fee option should be the option of last resort” for larger projects.<sup>59</sup> Meanwhile, Paul K. Stockman argues that any inclusionary program that “ignores or minimizes the importance of the location of housing will have only limited success at great cost.”<sup>60</sup> Granted, Stockman is writing about 40B in Massachusetts, which operates at a much larger scale than

Boston's Inclusionary Development Policy or the other IZ programs examined in this report. What scale is most crucial for the location of housing?

One of the reasons for opposition to in-lieu fees is that most are set at an amount lower than what is needed to actually build an affordable unit. In 1996, the lowest in-lieu fee charged by an inclusionary program in California was \$300 in Pleasanton.<sup>61</sup> The highest was in Oceanside, but it was only \$36,000 per unit. In one of the few scholarly pieces to directly tackle in-lieu fees in an empirical manner, Mukhija found low fees to often be the “weak link” in IZ programs, because fees lower than the development cost of an affordable unit incentivize developers to opt-out of on-site construction.<sup>62</sup> Mukhija used an average construction cost (excluding land) of \$200,000 for a market-rate unit – based on an average construction cost of \$150-200 per square foot.<sup>63</sup> Of the 17 inclusionary ordinances that existed in Los Angeles and Orange Counties in 2010, Mukhija found that six had fees lower than \$100,000. Low fees are not desirable, because it reduces the amount of money collected for affordable housing.

Another argument against strictly enforcing on-site construction is the cost of services. Scholars such as Carol Baldassari and Karen Destorel Brown have noted that subsidized households often have difficulty paying for resident services and amenities like recreational facilities and full-time, on-site security.<sup>64</sup> Under New York City's “80/20” program, a solution was implemented where tenants in affordable units pay less (\$175/year) for amenities than market-rate tenants, who pay \$350 per year.<sup>65</sup>

Legal and economic arguments against inclusionary zoning have been made since the strategy's suburban inception. Scholars and developers accuse IZ of being an unconstitutional taking of private property and an inefficient method of affordable housing creation, which ironically slows overall housing development in a jurisdiction, causing prices to increase in the long-run. The point of this paper is not to justify the existence of IZ or not, but rather accept that it does and will continue to be used to create affordable housing. The most salient arguments to determine the extent to which IZ ordinances should be flexible are related to the social and economic benefits supposed to be created through mixed-income housing developments. However, mixed-income housing does not address the root causes of poverty, lending justification for allowing flexibility in IZ. Because it ignores the structural causes of inequality, mixed-income housing fails to justify rigid ordinances. The following chapters will demonstrate how three cities have built flexibility into inclusionary ordinances and the extent to which that flexibility has changed over time.



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<sup>3</sup> Jonathan Rothwell, "Housing Costs, Zoning, and Access to High-Scoring Schools" (Metropolitan Policy Program at the Brookings Institute, April 2012), Metropolitan Policy Program at the Brookings Institute.

<sup>4</sup> Bjorvatn and Cappelen (2003) as cited in Tara Watson, Gerald Carlino, and Ingrid Gould Ellen, "Metropolitan Growth, Inequality, and Neighborhood Segregation by Income," *Brookings-Wharton Papers on Urban Affairs* (2006): 3.

<sup>5</sup> Maria M. Canales, "All In Together: Re-Visited - A Comparative Analysis of Mixed-income Multi-family Housing" (Master in City Planning and Master in Science of Real Estate Development, Massachusetts Institute of Technology, 1993), 13.

<sup>6</sup> *Ibid.*, 3.

<sup>7</sup> Carol Baldassari, *Inclusionary Housing and Linkage Programs in Metro Boston* (Boston, MA: Metropolitan Area Planning Council (MAPC), 1986), 46.

<sup>8</sup> Marc Santora, "Across the Hall, Diversity of Incomes," *The New York Times* (New York City, September 4, 2011), New York edition, sec. RE1, <http://www.nytimes.com/2011/09/04/realestate/across-the-hall-diversity-of-incomes.html>.

<sup>9</sup> Peter Cohen, phone interview, February 14, 2012.

<sup>10</sup> Joe Kriesberg, in-person interview, February 23, 2012.

<sup>11</sup> Noah Maslan, in-person interview, February 24, 2012.

<sup>12</sup> Daniel R. Mandelker, "The Constitutionality of Inclusionary Zoning: An Overview," in Dwight Merriam, David J. Brower, and Philip D. Tegeler, eds., *Inclusionary Zoning Moves Downtown* (Washington DC: American Planning Association, 1985).

<sup>13</sup> Cecily T. Talbert and Nadia L. Costa, "Inclusionary Zoning," in Patricia E. Salkin, ed., *Current Trends and Practical Strategies in Land Use Law and Zoning* (Chicago, IL: American Bar Association, Section on State and Local Government Law, 2004), 70.

<sup>14</sup> Benjamin Powell and Edward Stringham, *Housing Supply and Affordability: Do Affordable Housing Mandates Work?*, Policy Study (Los Angeles, CA: Reason Public Policy Institute, April 2004), 20, <http://reason.org/files/d825c8e753e0cac9f4501fa66882425.pdf>.

<sup>15</sup> Antonio Bento et al., "Housing Market Effects of Inclusionary Zoning," *Cityscape: A Journal of Policy Development and Research* 11, no. 2 (2009): 16.

<sup>16</sup> Vinit Mukhija et al., "Can Inclusionary Zoning Be an Effective and Efficient Housing Policy? Evidence From Los Angeles and Orange Counties," *Journal of Urban Affairs* 32, no. 2 (May 2010): 229-252.

<sup>17</sup> *City of Los Angeles Inclusionary Housing Study* (Irvine, CA: David Paul Rosen & Associates, 2002), <http://lahd.lacity.org/lahdinternet/Portals/0/Policy/DRAreprt.pdf>.

<sup>18</sup> Dustin C. Read, "Inclusionary Zoning: A Framework for Assessing the Advantages and Disadvantages" (Homes for Working Families, May 2008), <http://ssrn.com/abstract=1373540>.

<sup>19</sup> Powell and Stringham, *Housing Supply and Affordability: Do Affordable Housing Mandates Work?*, 16.

<sup>20</sup> Alan Mallach, *Inclusionary Housing Programs: Policies and Programs* (New Brunswick, NJ: Center for Urban Policy Research, 1984).

<sup>21</sup> Nico Calavita and Alan Mallach, "An International Perspective On Inclusionary Housing," in *Inclusionary Housing in International Perspective: Affordable Housing, Social Inclusion, and Land Value Recapture* (Lincoln Institute of Land Policy, 2010), 10.



- <sup>22</sup> Powell and Stringham, *Housing Supply and Affordability: Do Affordable Housing Mandates Work?*.
- <sup>23</sup> Bento et al., "Housing Market Effects of Inclusionary Zoning," 9.
- <sup>24</sup> Read, "Inclusionary Zoning: A Framework for Assessing the Advantages and Disadvantages," 6.
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- <sup>26</sup> Donald Hagman, "Taking care of one's own through inclusionary zoning: bootstrapping the low- and moderate-income housing by local government," cited in Nico Calavita and Kenneth Grimes, "Inclusionary Housing in California: The Experience of Two Decades," *Journal of the American Planning Association* 64, no. 2 (1998): 3.
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- <sup>29</sup> Stephen Malpezzi, "Housing Prices, Externalities, and Regulation in U.S. Metropolitan Areas," *Journal of Housing Research* (Vol. 7, No. 2, 1996), pp. 209-241, as cited in Powell and Stringham, *Housing Supply and Affordability: Do Affordable Housing Mandates Work?*.
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- <sup>34</sup> Tom Calahan, phone interview, March 8, 2012.
- <sup>35</sup> Alan Mallach, *Inclusionary Housing Programs: Policies and Programs* (New Brunswick, NJ: Center for Urban Policy Research, 1984), 43.
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- <sup>39</sup> Paul Cheshire, "Policies for Mixed Communities: Faith-Based Displacement Activity?," *International Regional Science Review* 32, no. 3 (June 2009): 348.
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- <sup>43</sup> *Ibid.*, 28.
- <sup>44</sup> Read, "Inclusionary Zoning: A Framework for Assessing the Advantages and Disadvantages," 17.
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<sup>49</sup> Ibid., 399.

<sup>50</sup> Alastair Smith, “Mixed-Income Housing Developments: Promise and Reality” (Harvard Joint Center for Housing Studies, October 2002), 37, [http://www.jchs.harvard.edu.libproxy.mit.edu/publications/W02-10\\_Smith.pdf](http://www.jchs.harvard.edu.libproxy.mit.edu/publications/W02-10_Smith.pdf).

<sup>51</sup> Schwartz and Johnston, *Local Government for Affordable Housing: An Evaluation of Inclusionary Housing Programs in California*, 25.

<sup>52</sup> Jenny Schuetz, Rachel Meltzer, and Vicki Been, “31 Flavors of Inclusionary Zoning: Comparing Policies From San Francisco, Washington, DC, and Suburban Boston,” *Journal of the American Planning Association* 75, no. 4 (2009): 450.

<sup>53</sup> *Affordable by Choice: Trends in California’s Inclusionary Housing Programs* (Non-Profit Housing Association of Northern California, 2007), 28, [http://nonprofithousing.org/pdf\\_attachments/IHIREport.pdf](http://nonprofithousing.org/pdf_attachments/IHIREport.pdf).

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<sup>55</sup> Baldassari, *Inclusionary Housing and Linkage Programs in Metro Boston*, 19.

<sup>56</sup> *Affordable by Choice*, 17.

<sup>57</sup> Mukhija et al., “Can Inclusionary Zoning Be an Effective and Efficient Housing Policy? Evidence From Los Angeles and Orange Counties,” 240.

<sup>58</sup> Ibid., 250.

<sup>59</sup> *Affordable by Choice*, 33.

<sup>60</sup> Paul K. Stockman, “Anti-Snob Zoning in Massachusetts: Assessing One Attempt at Opening the Suburbs to Affordable Housing,” *Virginia Law Review* 78, no. 2 (1992): 561.

<sup>61</sup> Calavita and Grimes, “Inclusionary Housing in California: The Experience of Two Decades.”

<sup>62</sup> Mukhija et al., “Can Inclusionary Zoning Be an Effective and Efficient Housing Policy? Evidence From Los Angeles and Orange Counties,” 237.

<sup>63</sup> Ibid., 250.

<sup>64</sup> Baldassari, *Inclusionary Housing and Linkage Programs in Metro Boston*, 46; Brown, “Expanding Affordable Housing Through Inclusionary Zoning: Lessons From the Washington Metropolitan Area,” 11.

<sup>65</sup> Santora, “Across the Hall, Diversity of Incomes.”





## 04. CASE #1 - BOSTON

### 4.1 DATA & DEMOGRAPHICS

Like most large municipalities, Boston has a racially diverse population. According to the 2010 U.S. Census, 53.92% of inhabitants are white, 24.36% African American, and 8.94% Asian. 8.40% of respondents identified as “other,” and 3.94% are two or more races. 17% of Census respondents identified with a Hispanic or Latino ethnicity, regardless of race. Table 4-1 shows how Boston’s overall population has decreased, then increased, since 1970. One contributor to both population growth and housing unaffordability is the City’s increasing student population, which competes for apartments with permanent residents due to an inadequate supply of dorm facilities.

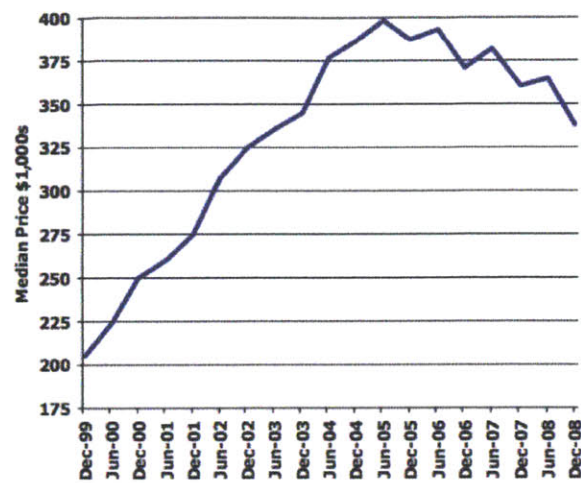
**Table 4 - 1: City of Boston Population, 1970-2010**

Year	Population	Population Increase from Previous Census	Change in Percentage
1970	641,071	N/A	N/A
1980	562,994	-78,077	-12.2
1990	574,283	11,289	+2.0
2000	589,141	14,858	+2.6
2010	617,594	28,453	+4.8

Source: 2010 U.S. Census; *The Boston Economy 2005* (Boston Redevelopment Authority)<sup>1</sup>

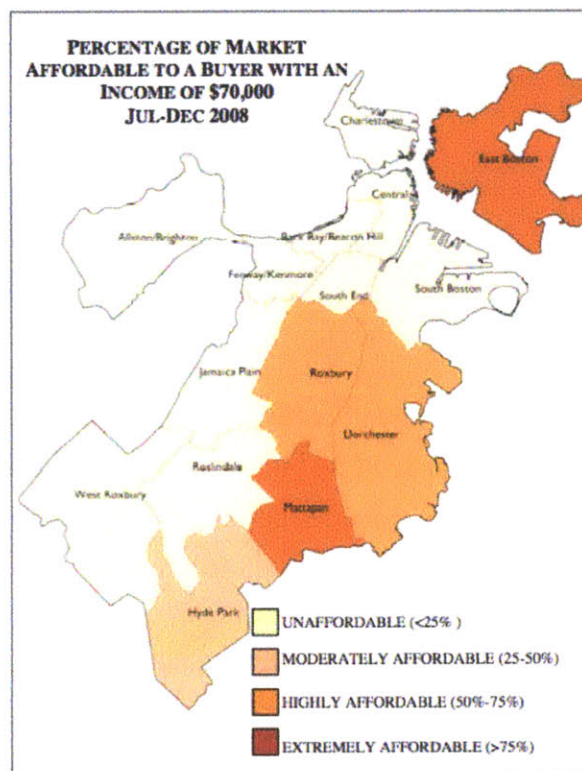
From the late 1990s to the present, house prices in Boston increased and then declined slightly. From 1998 to 2003, house prices increased by 112%.<sup>2</sup> In just one year, between 2000 and 2001, this increase equaled 23%.<sup>3</sup> This resulted in a corresponding increase in the annual income needed to purchase the average home: in 1998, \$55,000 was sufficient to afford mortgage and interest payments, but by 2003, an annual income of \$105,000 was needed.<sup>4</sup> Below, Figure 4-1 shows the overall trend in Boston’s rising and then declining home prices from 1999 to 2008; it is not stated whether the prices have been adjusted for inflation. Unfortunately, the city’s affordable neighborhoods experienced larger than average price increases: 185% in Roxbury, 152% in East Boston, 132% in Dorchester, and 122% in Mattapan.<sup>5</sup> Figure 4-2 shows how affordability varied in 2008 by neighborhood.

Figure 4 - 1: Median House Price in Boston 1999-2008 (in six-month periods)



Source: *Leading The Way III - A Report on Boston's Housing Strategy for 2009-2012* (City of Boston, 2009)<sup>6</sup>

Figure 4 - 2: Percentage of Market Affordable to a Buyer with an Income of \$70,000 (Jul-Dec 2008)



Source: *Leading The Way III - A Report on Boston's Housing Strategy for 2009-2012* (City of Boston, 2009)<sup>7</sup>

Renters have also faced increasing apartment costs. In 1995, the average 2-bedroom apartment in the city rented for \$909. In 2001, the listed value increased by 59% to \$1,448 per month.<sup>8</sup> Table 4-2 shows how rents for a 2-bedroom apartment varied by neighborhood between 1998 and 2003. In 2011, average monthly rents in metropolitan Boston reached \$1,686, when they had been \$1,649 the previous year and \$1,600 in 2009.<sup>9</sup> Certain neighborhoods are even more costly – for instance, \$2,658 on average in the Back Bay.<sup>10</sup> To afford the average citywide rent requires an hourly wage of \$32 or annual income of \$67,440. The City of Boston's median household income is \$50,684 (75% of the income needed), and 21.2% of the population had an income below the poverty level in 2010.<sup>11</sup> According to Reis Inc., Boston's vacancy rate dropped to 4% at the end of 2011, the lowest level it has been in 9 years. Furthermore, Boston's rental market is the fifth most-expensive in the U.S. – other top locations are Fairfield County, CT; Westchester County, NY; San Francisco, CA; and New York City.<sup>12</sup>

**Table 4 - 2: Mean Advertised Rents, Two Bedroom Apartments in Boston's Neighborhoods, 1998 to 2003**

Neighborhood	1998	1999	2000	2001	2002	2003
<b>Allston/Brighton</b>	\$1,231	\$1,278	\$1,433	\$1,532	\$1,448	\$1,359
<b>Back Bay/Beacon Hill</b>	\$2,198	\$2,069	\$2,317	\$2,554	\$2,329	\$2,733
<b>Central</b>	\$2,312	\$1,963	\$2,009	\$2,181	\$2,209	\$2,292
<b>Charlestown</b>	\$1,751	\$1,606	\$1,717	\$1,942	\$1,784	\$1,868
<b>Dorchester</b>	\$903	\$991	\$1,188	\$1,305	\$1,298	\$1,297
<b>East Boston</b>	\$954	\$1,038	\$1,178	\$1,221	\$1,201	\$1,162
<b>Fenway/Kenmore</b>	\$1,339	\$1,511	\$1,676	\$1,846	\$1,674	\$1,629
<b>Hyde Park</b>	\$841	\$1,068	\$1,198	\$1,249	\$1,317	\$1,296
<b>Jamaica Plain</b>	\$1,199	\$1,240	\$1,357	\$1,546	\$1,531	\$1,422
<b>Mattapan</b>	\$725	\$900	\$983	\$1,245	\$1,325	\$1,303
<b>Roslindale</b>	\$944	\$1,023	\$1,222	\$1,316	\$1,329	\$1,294
<b>Roxbury</b>	\$1,066	\$1,052	\$1,396	\$1,344	\$1,417	\$1,364
<b>South Boston</b>	\$1,219	\$1,305	\$1,360	\$1,557	\$1,495	\$1,402
<b>South End</b>	\$1,626	\$1,825	\$2,223	\$2,158	\$1,956	\$2,027
<b>West Roxbury</b>	\$990	\$1,134	\$1,299	\$1,415	\$1,305	\$1,297
<b>Citywide*</b>	\$1,198	\$1,251	\$1,430	\$1,539	\$1,501	\$1,485
<b>*The citywide average is weighted proportionately to the rental housing stock in each neighborhood</b>						

Source: *Leading the Way II - A Report on Boston's Housing Strategy FY2004-FY2007* (City of Boston, 2004)<sup>13</sup>



The Center for Housing Policy has created Paycheck to Paycheck, an online database of wage and housing price information that can be used to visualize annual incomes for specific industries and job types in comparison to housing costs in specific cities. The rental and homeownership affordability gaps for the third quarter of 2011 in Boston are shown in Figures 4-3 and 4-4. None of the job types examined earn an annual wage that is sufficient to purchase the median-priced home in the city, while only elementary school teachers and police officers earn enough to afford the median rent for a two-bedroom apartment; nurses, retail salespersons, and janitors' incomes are insufficient.

Figure 4 - 3: Third Quarter 2011 Homeownership Market

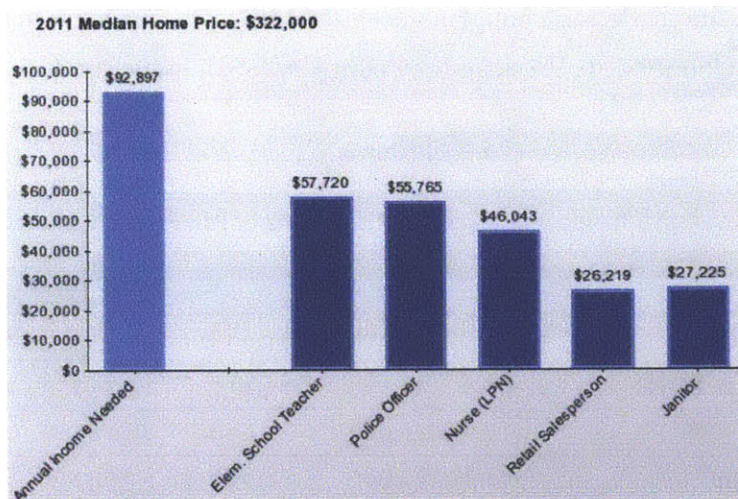
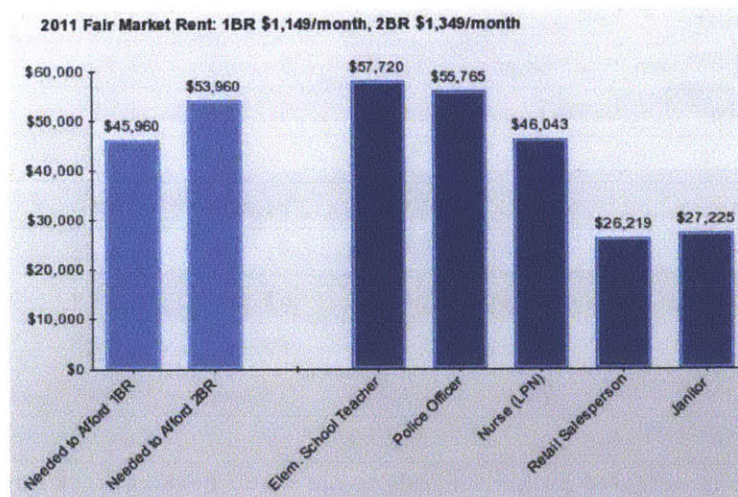


Figure 4 - 4: Third Quarter 2011 Rental Market



Source: Paycheck to Paycheck: Boston, MA (The Center for Housing Policy)<sup>14</sup>

Housing unaffordability is a clear problem in Boston. In 2001, nearly one quarter of the city's 228,500 households devoted more than 50% of income to housing.<sup>15</sup> As of 2010, 48.7% of Boston's households are paying more than 30% of income for housing costs – 39.4% are paying more than 35%, and 9.3% are paying between 30 and 35%.<sup>16</sup> The situation is worse for renters, 80,465 of whom (53.1% of total renters) are paying more than 30% of their income for monthly rent; 34,916 owner households (40.9% of total homeowners) are similarly burdened.

Housing unaffordability has worsened over the past decade. According to the 2000 Census, 37.9% of renter households were burdened by housing costs, and 30.7% of homeowners were.<sup>17</sup> Overall, 35.7% of the city's total population paid more than 30% of income for housing in 2000. These changes in unaffordability between 2000 and 2010 are summarized in Table 4-3 below, while Table 4-4 shows how the share of severely burdened households was distributed by income group in 2007. Not surprisingly, a larger proportion of lower-income households face housing affordability burdens than more affluent households.

**Table 4 - 3: Change in Housing Unaffordability in Boston, 2000 to 2010**

<b>Percent of Households Paying More than 30% of Income for Housing</b>	<b>2000</b>	<b>2010</b>
Renters	37.9%	53.1%
Owners	30.7%	40.9%
All Households	35.7%	48.7%

Source: 2000 U.S. Census; 2006-2010 American Community Survey 5-Year Estimates

**Table 4 - 4: Renters with Housing Burdens in Excess of 50% of Income, 2007**

<b>Income</b>	<b>Rent Burdened Households</b>	<b>% of Rent Burdened Households</b>
< \$20,000	20,090	61%
\$20,000 - \$50,000	11,722	36%
> \$50,000	857	3%
<b>TOTAL</b>	<b>32,669</b>	<b>100%</b>

Source: *Leading The Way III - A Report on Boston's Housing Strategy for 2009-2012* (City of Boston, 2009)<sup>18</sup>

It is also illuminating to look beyond employment and income to racial differences in housing affordability. Unfortunately, it is unsurprising that a larger share of racial and ethnic minorities face housing trouble than white residents. This is true across income categories (extremely low-income, very low-income, and low-income) for both renters and homeowners, as shown in Table 4-5 and Figure 4-5.



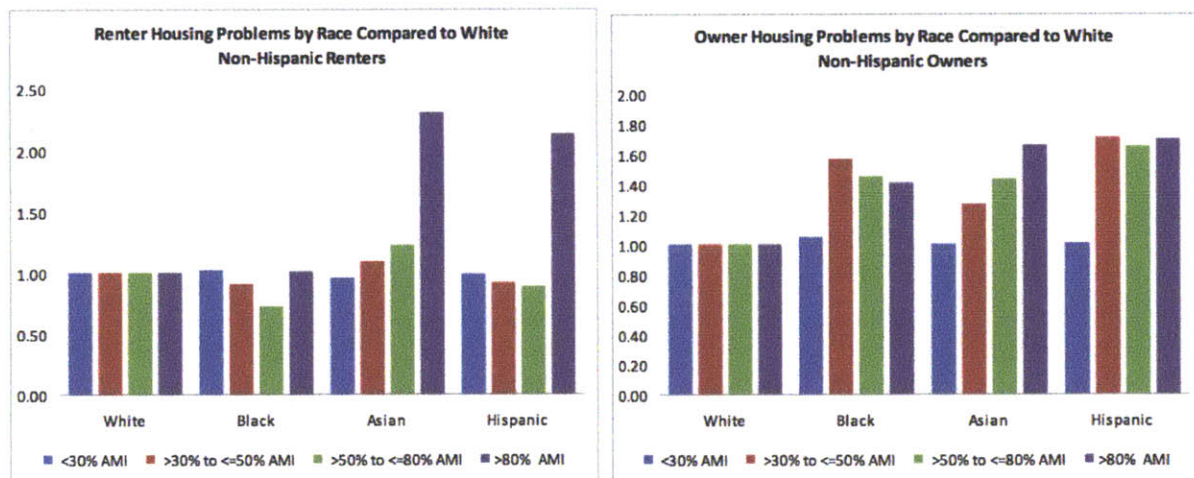
Although the data is over a decade old, it is likely that similar racial discrepancies exist in 2012, especially considering the higher instances of predatory, sub-prime mortgage lending and foreclosure among the country's minority populations.

Table 4 - 5: Housing Problems by Race

Income	Renters - % with Any Housing Problems					Owners - % with Any Housing Problems				
	White Non- Hispanic	Black Non- Hispanic	Hispanic	Asian	Total	White Non- Hispanic	Black Non- Hispanic	Hispanic	Asian	Total
ELI	65.4%	67.3%	71.0%	65.7%	66.6%	81.0%	78.0%	83.0%	84.8%	81.0%
VLI	62.6%	66.1%	65.7%	80.4%	64.3%	52.5%	79.9%	83.5%	73.9%	54.6%
LI	34.5%	39.0%	38.6%	58.6%	36.2%	41.5%	65.4%	65.8%	67.0%	43.5%
Above 80%	8.2%	13.5%	25.3%	24.2%	10.3%	12.0%	21.4%	22.6%	21.9%	12.6%
Total	34.9%	46.5%	55.0%	49.3%	38.9%	23.2%	38.8%	40.9%	34.3%	24.3%

Source: 2000 Census, City of Boston Analysis of Impediments to Fair Housing Choice (June 2010)<sup>19</sup>

Figure 4 - 5: A Comparison of Housing Problems by Race and Ethnicity



Source: 2000 Census, City of Boston Analysis of Impediments to Fair Housing Choice (June 2010)<sup>20</sup>

One solution to reduce housing affordability burdens for all of Boston's residents, particularly its lower-income and minority populations, is to increase the supply of housing. Unfortunately, Boston is largely built-out, and development opportunity is limited. Despite this, ground was broken for 1,912 housing units in 2011, the largest number in five years. 418 (21.8%) of these are affordable.<sup>21</sup> The real estate market is active in the areas surrounding the city as well: in Greater Boston, residential construction increased 71% between January 2011 and January 2012, from \$81.7 million to \$139.4 million.<sup>22</sup> Over the next two years, it is expected that between 1,000 and 1,500 new rental apartments will be



constructed in the City.<sup>23</sup> However, this increase in supply will not be enough to noticeably drive down the cost of housing. Not only does this represent a miniscule (0.37%) increase of the housing stock, but market segmentation means that the construction of new luxury units is unlikely to decrease housing costs in the city's middle- and working-class neighborhoods.<sup>24</sup>

## 4.2 ESTABLISHING INCLUSIONARY ZONING

Boston's inclusionary zoning ordinance, known as the Inclusionary Development Policy (IDP), had a long history leading up to its establishment. Despite requiring special authorizing legislation from the state due to a narrow scope of "home rule," the City has pursued a variety of affordable housing strategies.

In 1969, Massachusetts adopted Chapter 40B, colloquially referred to as the "anti-snob zoning act." Similar to the solution adopted in New Jersey after *Mount Laurel I* and *II*, 40B is a law that allows developers to apply to the state for expedited permits, if a minimum percentage of a project's units are affordable, to build housing that does not conform to local zoning. Any jurisdiction with a housing stock that is at least 10% affordable is exempted. In 2000, Boston contained more than 40% of the affordable housing in the greater metropolitan region. Unlike IZ, 40B is a passive rule, because action must be taken by developers to participate and build affordable housing.<sup>25</sup>

Another predecessor to the IDP occurred in the early 1980s, when residents first pushed for special community benefits, including on-site affordable housing, by putting pressure on the developers of the \$500 million Copley Place mixed-use project proposed for the border of the Back Bay and South End neighborhoods. Massachusetts, rather than the City, had authority over the site. A Citizens Review Committee was established, through which 25% on-site affordable housing was mandated by the state.<sup>26</sup>

Furthermore, Boston established a linkage ordinance in 1983 to meet the housing demand of Latin American and Asian immigrants and other workers.<sup>27</sup> The policy applies to large-scale commercial, retail, hotel, or institutional development seeking zoning relief (which most projects must do, given the city's outdated zoning code). In 1983, developers were required to pay \$5 per square foot over a project's first 100,000 square feet.<sup>28</sup> Payments were made over twelve years, which resulted in a net present value (NPV) of only \$2.40/ft<sup>2</sup>. In 1986, the payment for projects built downtown was reduced to seven years, increasing the NPV to \$3.70/ft<sup>2</sup>. In 2001, the state legislature approved a variety of

modifications to the linkage program. Developers are now obligated to pay \$8.62/ft<sup>2</sup> over 100,000 square feet – \$7.18 for housing, and \$1.44 for jobs training.<sup>29</sup> The \$7.18 housing fee represented an increase of 30% from \$5.49. Additionally, the payment schedule was reduced to seven years for neighborhood-based projects as well as those built downtown. In 2006, the fees were increased again: \$7.87 per square foot for affordable housing and \$1.57 for employment.<sup>30</sup> Increasing the payment schedule and the NPV for linkage increases the burden on developers. Linkage payments are deposited into the Neighborhood Housing Trust (NHT), which was established in 1986. As explained later in this chapter, the NHT should be used as a model for the IDP and in-lieu fees.

Peter Dreier and Bruce Erlich report that Boston first initiated an informal inclusionary policy in 1986 under Mayor Flynn. The city negotiated with private developers to set aside 10% of all units as restricted to low- and moderate-income households.<sup>31</sup> However, it was not until 2000 that any sort of formal inclusionary policy was established. In 1998 and 1999, the Massachusetts Affordable Housing Alliance (MAHA) and other non-profit groups made it a public issue that Boston did not have a formal inclusionary development policy.<sup>32</sup> They generated press attention around the growing disparity between what was being built – high-end luxury developments in downtown – and what needed to be built. In many ways, the new construction market has continued following this trend. One of the reasons for the IDP was to create more consistency, fairness, and equality across projects; prior, everything was up for negotiation and there were no ground rules.<sup>33</sup> Such an unpredictable environment was not favorable for developers. However, despite establishment of an official IDP, my interviewees stated that conditions are still negotiable on a project-by-project basis.

Mayor Menino established Boston's Inclusionary Development Policy (IDP) through an Executive Order released in February 2000. Set-asides were 10% and in-lieu fees were \$52,000 per affordable unit; developers could also build the affordable units off-site, but if they chose this option, they had to build 15% rather than 10%; three years later, the on-site set-aside was set at 15% as well. Requirements applied to projects of ten or more units that triggered zoning relief – because the City's zoning code has not been updated, most projects require relief. Developers' participation in the IDP is not linked to a specific benefit, beyond this zoning relief and general permission to build. An anonymous developer I spoke with noted that providing affordable housing creates an indirect benefit by easing the community process; when residents know your project is bringing in affordable housing, it changes how people perceive you and your project in the neighborhood.<sup>34</sup>



Half of the income-restricted units were affordable to people at or below 80% AMI, and the other half were reserved for households between 80 and 120% AMI, with an average affordability of 100%. The income range (\$66,080 to \$99,120 for a family of four) was calculated based on the Boston Metro AMI, and was the same for both rental and ownership units.<sup>35</sup>

In 2006, the IDP's income limits were tied to the City of Boston's AMI, rather than the Boston Metro AMI, which effectively lowered the income limits and more accurately reflected the needs of the City's population. Additionally, requirements for rental and ownership units diverged: rental units became targeted to households earning between \$45,000 and \$56,400, and for-sale units were reserved for incomes between \$58,900 and \$73,600.<sup>36</sup> In 2007, the income limits reverted back to the Boston Metro AMI because it was a more reliable measure that people were more familiar with. Rental units had to be affordable to households at less than 70% AMI. Half of homeownership units had to be affordable at less than 80% AMI (approximately \$50,000), with the other half being less than 100% AMI (approximately \$90,000), for an average of no more than 90%.<sup>37</sup> This has been a controversial aspect of the IDP – housing advocates want the AMI to be based on the City of Boston's income, which is lower than the larger metropolitan area's median income. As of 2010, the City of Boston's median household income is \$50,684, a little over half of HUD's median income estimate for the Boston-Cambridge-Quincy metro area, \$97,800 for Fiscal Year 2012.

How do eligible households find out about on-site inclusionary opportunities? Affordable units under the IDP are advertised in a variety of neighborhood newspapers, including “the least likely place” (i.e., a unit in one neighborhood must be advertised in a crosstown neighborhood's paper).<sup>38</sup> Eligible owners and renters are selected through a lottery process, which is run by the development team and overseen by the City's Fair Housing Department. After applicants are selected, the BRA certifies their incomes. Household income restrictions are built into the deed and have a 30-year guarantee, with a possibility of an additional 20-year extension.<sup>39</sup> The deed covenant limits profits to 5% if residents sell their units.<sup>40</sup> The covenants are registered on the title of the property as well as the mortgage.<sup>41</sup> After fifty years, units can be sold for the market price.

Although the citywide zoning code has not been updated recently, the Harrison/Albany Corridor Strategic Plan in the South End was approved in late 2011, after almost four years of planning.<sup>42</sup> In return for the greater heights and densities provided for in the plan, “specific and significant public benefits are received in return.”<sup>43</sup> The corridor requires 20% affordable housing, 5% affordable



commercial space, 5% affordable cultural space, or a combination of the three. The 20% affordability requirement for residential projects is 5% more than the citywide IDP requirement.

Because it could be revoked at any time, housing advocates worry that the IDP is in the form of an executive order rather than formally written into the zoning code. However, Mayor Menino champions the flexibility of the program, for it allows the city to better respond to changes in the economy and the housing market.<sup>44</sup> My interviewees frequently stated that despite the recession, Boston's housing market was still relatively strong, especially for rental units. The City's unique market strength is able to support the IDP requirements.<sup>45</sup>

### 6.3 BUILDING AFFORDABLE UNITS ON-SITE

Many of my interviewees noted Mayor Menino's advocacy for on-site construction. In 2002, the National Housing Conference Affordable Housing Policy Review reported that the "overall goal" of the IDP "is to foster the economic integration of Boston. As such, the city and the Boston Redevelopment Authority (BRA) encourage developers to meet their inclusionary development obligations through on-site construction of affordable units."<sup>46</sup> An internal memo to staff-members from former BRA Director Mark Maloney in December 2004 concurred, stating that "it is BRA policy that the affordable units should be presumed to be created onsite."<sup>47</sup> In a 2006 report released by the Massachusetts Association of Community Development Corporations (MACDC), it was acknowledged that the BRA "strongly favors onsite development and sees alternatives to onsite construction, especially cash-out fees, as a last resort."<sup>48</sup> According to Sheila Dillon, formerly of the Mayor's Office, when the City's IDP was first put in place, very few projects were allowed to buy out. Boston prefers on-site construction because it is easiest for the City, the units are developed more quickly, and it creates income diversification at the building-level.<sup>49</sup>

Kenan Bigby, Project Manager at Trinity Financial, a Boston-based development company, argues that it makes sense to push for affordable units to be built on-site while there is financing for market-rate projects.<sup>50</sup> When other affordable housing resources are tight, as they are in 2012, accepting cash contributions and permitting buy-outs by developers does not really get the City what it wants: affordable units. This is because in-lieu fees function as gap financing for affordable projects; if non-profit development activity has slowed, there may not be any projects to fund. From Mr. Bigby's

perspective, municipalities need to set an approach – and modify it over time – in accordance with broader trends in housing finance.

A strong proponent of on-site construction that I spoke with was Dharmena Downey, Executive Director of Boston's Fenway Community Development Corporation. As explained later in the chapter, the Fenway neighborhood is currently facing a lot of development pressure in the form of high-rise towers on Boylston Street. Despite the rhetoric in support of on-site construction, the BRA continues to allow developers to buy out, much to Ms. Downey's chagrin. She would like to see the City set and follow a cohesive policy and enforce the on-site requirement more, rather than allowing everything to be up for negotiation.<sup>51</sup> For instance, the BRA has stated a policy of requiring at least half of the obligation to be fulfilled on-site, so a recent project by developers Samuels & Associates planned for the Fenway is building this minimum (7.5%) on-site.

The recent expansion proposed for Copley Place demonstrates the tension between on-site and off-site construction, and the BRA's ability to negotiate in either direction. This project was mentioned previously for having set a precedent in Boston for managing to obtain affordable set-asides three decades ago. In November 2011, the BRA approved a 47-story addition to Copley Place. Developer Simon Property Group (SPG) planned to designate 10 (3%) of the 318 condos as affordable, satisfying the remaining 12% obligation through fee payments rather than building an additional 38 units.<sup>52</sup> Opponents demanded a total set-aside larger than 15% because of the historical legacy of Copley Place; State Representative Byron Rushing encouraged SPG to provide 25% affordable units. Opponents even staged an 'Occupy the Mayor's Office' protest at City Hall, yet the BRA granted approval anyway. In mid-December however, SPG announced that all 48 required affordable units would be built on-site.<sup>53</sup> According to Casey Ross at *The Boston Globe*, the developer complied with more on-site affordability after the BRA advised them to.<sup>54</sup>

## 6.4 FLEXIBLE ALTERNATIVES TO ON-SITE CONSTRUCTION

Mayor Menino created a flexible IDP to allow the BRA to make compromises, according to former BRA Director Maloney.<sup>55</sup> The 2006 MACDC report further elaborates on this practice, stating, "Due to the lack of a predefined stipulations or protocol, it is common practice for a developer to enter ad hoc negotiation with the BRA director to determine a solution that is amenable to both parties. Each project is a unique combination of onsite units, offsite units, and/or cash-out fee."<sup>56</sup> Developers of individual projects are allowed to satisfy their affordable housing obligation in multiple manners. One



person I spoke with is fulfilling their obligation by donating land to an affordable housing developer and building some units on-site as well.<sup>57</sup> It is up to the BRA's discretion how a developer may comply with the IDP obligation. A 2009 report states that alternatives are only approved "when they serve the city's housing policies and needs better than on-site construction."<sup>58</sup> One rationale for not uniformly requiring affordable units be built on-site is because in some cases, this results in affordable units located in high-rise luxury buildings with costly amenities located downtown, away from services better tailored to the needs of low- and moderate-income families.

The IDP as established in 2000 featured a \$52,000 in-lieu fee, which was the average amount of subsidy the city put into affordable units. The in-lieu fee amount was increased from to \$97,000 in 2005 and then to \$200,000 in 2006.<sup>59</sup> According to Sheila Dillon, former Housing Advisor to Mayor Menino, the fee was increased in order to disincentivize off-site development and better reflect the additional state and federal subsidies needed to build a unit of affordable housing.<sup>60</sup> The rationale for the original fee amount was "based on the average city subsidy (not total subsidy) used to build an affordable unit" at the time.<sup>61</sup> Tom Calahan, Executive Director of the Massachusetts Affordable Housing Alliance (MAHA), would like to see the in-lieu fee amount tied to a housing cost inflation index, so as to remove it from periodic political fights.<sup>62</sup>

In 2006, the in-lieu fee for condo projects was raised to the greater of two options: \$200,000 per affordable unit or at least half the difference between the price of a market-rate unit and the price of an on-site affordable unit. Rental projects had only one option, \$200,000 per affordable unit. The fee more than doubled because Mayor Menino "recognize[ed] that the current \$97,000 contribution was substantially below what it actually cost developers to built [sic] on-site units and was limiting the ability to realize these off-site affordable units."<sup>63</sup> Kenan Bigby, Project Manager at Trinity Financial, notes that the general trend of fee increases dovetails with the desire for the units to be built on-site, because Boston is trying to attain a balance so that it is a little less painful for developers to build affordable units on-site.<sup>64</sup> If the fee is not set high enough, according to Tom Calahan of MAHA, every developer will choose to pay the fee, and the city will not get enough money to adequately subsidize an off-site unit. Essentially, a low fee ensures that the city will be losing on both sides, as the IDP will create neither on-site nor off-site units.<sup>65</sup>

One of the primary arguments in favor to flexibility is the scale at which IZ creates affordable units. Sheila Dillon has a flexible view of the IDP: because a handful of affordable units in a luxury downtown development will not have a huge impact, she sees it as more reasonable and sustainable to



create opportunities for low- and moderate-income populations at the neighborhood, rather than building, level. Joe Kriesberg, President of the Massachusetts Association of Community Development Corporations (MACDC), concurred with this sentiment about the scale at which the IDP operates.<sup>66</sup> As Mr. Kriesberg pointed out, the subsidized units – usually one- or two-bedroom apartments – created through IZ are not family-friendly.

Another reason Mr. Kriesberg supports the IDP's flexibility is because the money from in-lieu fee payments can ultimately have a positive impact on neighborhood development from a holistic point of view. Although the original intent of IZ was to create socioeconomic integration in suburbs, developing new affordable housing in lower-income urban communities is not necessarily a bad thing. By improving the built environment, new affordable housing projects can help attract more private investment, encourage neighbors to invest in their own homes, reduce crime, and improve the overall quality of life. Mr. Kriesberg sees it as ironic that those who oppose a flexible IDP suggest that building more affordable housing in low-income communities is actually a bad thing.

A 2005 article published in *The Boston Globe* details a variety of circumstances in which developers were allowed to fulfill the IDP requirements flexibly.<sup>67</sup>

- Intell Boston Harbor (500 Atlantic Avenue) was initially required to sell 21 of 141 high-end condominiums at a discounted rate (between \$175,000 and \$300,000 rather than market-rate prices of \$1.6 million), amounting in a loss of approximately \$30 million. Instead, the BRA accepted a \$1.1 million payment (\$52,000 per unit). Under a \$200,000 requirement (as implemented a year later), the city could have collected \$4.2 million, and the developer still would not have faced such a steep loss. If the city used a sliding scale fee and collected half the difference between the market-rate and affordable price, they would have collected even more—\$14.7 million – and the developer still would have preferred it over on-site construction.

Market-rate price	\$1,600,000
Affordable price	\$200,000
Difference	\$1,400,000
Half the difference	\$700,000 x 21 units

- Mandarin Oriental (near the Prudential Center) had 50 condominiums to sell at prices between \$2 million and \$12 million. The BRA allowed developers CWB Boylston to fulfill the IDP obligation by renting (rather than selling) 10 units (a 20% set-aside) at discounted rates for 40 years. The developers estimate this will reduce their revenue between \$6 million and \$7 million. However, converting to affordable rental units was likely beneficial for the developer,

as it allowed CWB to spread the cost out over time, rather than selling the 20 units at a loss (between \$16 million and \$96 million, using a 15% on-site set-aside) upfront.

- Clippership Wharf (East Boston) - WinnDevelopment proposed a 400-unit luxury condo development, of which 60 units (15%) should have been affordable. The IDP obligation was instead fulfilled with 20 (5%) on-site income-restricted units and a \$1.6 million payment to another mixed-income development. At a cost of \$52,000 per unit paid for the additional 40 units, Winn should have owed \$2.08 million, more than the \$1.6 million paid.
- Lafayette Lofts (Chinatown) - The BRA did not permit the developer of this 42-unit project to build 4 moderate-income units and pay \$450,000. Under the 15% requirement, 6 units should have been built on site; the remaining 2 units should have yielded a payment of only \$104,000.

Ms. Dillon mentioned an example wherein developer Joe Fallon combined his IDP and linkage obligation to create twenty units of elderly housing in South Boston.<sup>68</sup> These examples demonstrate the flexibility of IZ in Boston – not only does the BRA allow for in-lieu fee payments, but affordable housing tends to be created in a variety of manners for each market-rate project. Off-site construction is rare, and trouble at the Reserve Channel Condominiums showcases the difficulty of this option. In 2004, Pappas Enterprises built the 130-unit luxury Court Square Press Building. Rather than reserving 15% of the units as affordable, the IDP obligation was fulfilled through construction of the 26-unit Reserve Channel Condominiums. Trouble arose when the project's reserve fund was depleted, and residents were angered by the building's poor quality and the lack of action taken to remedy leaking roofs and other issues. In 2010, the BRA proposed granting \$100,000 in IDP funds to address concerns and supplement the dwindling reserve fund.<sup>69</sup> If Pappas Enterprises had constructed the affordable units within the luxury building, the low-income residents would likely not have had to deal with the consequences of the lower-quality building. However, it would have cost the developer more to subsidize the affordable units, which would have been identical to the luxury units.

According to Ms. Dillon, Boston has become more flexible in allowing developers to buy out as economic conditions worsened, especially over the past two to three years.<sup>70</sup> The City currently has an unwritten preference that at least half of the units will be built on site in certain neighborhoods, such as Back Bay, Beacon Hill, Chinatown, and Fenway – areas of the city with higher land costs, which make it more difficult for a non-profit to develop affordable housing. Most of my interviewees were in agreement that Boston has become more permissive in allowing developers to buy out of the affordable housing obligation imposed by the IDP – because the in-lieu fee amounts have increased. Before, the City drew a harder line because they knew the in-lieu fee was a terrible deal.<sup>71</sup> However, it is clear that



Mayor Menino continues to strongly prefer units to be built on-site. Susan Allen of The Drew Company acknowledges that this permissiveness benefits developers, but the fee increases do not.<sup>72</sup> Joe Kriesberg meanwhile acknowledged there is ambivalence among Boston's CDCs about preferring on-site construction or fee payments.<sup>73</sup>

The Massachusetts Affordable Housing Alliance is very supportive of the off-site option, because it is more practical than mandating on-site construction for every project, which does not adequately meet the interests of its membership.<sup>74</sup> Most of Boston's development is in high-rise towers built downtown, but MAHA serves a population that would rather have more opportunities to live in neighborhood communities such as Dorchester, Roxbury, Mattapan, and Hyde Park – or neighborhoods adjacent to these communities – rather than on the fourteenth floor of a high-rise.

## 6.5 WHAT HAPPENS TO THE MONEY PAID IN LIEU OF CONSTRUCTION?

Developers appreciate being able to make payments over time, rather than in an upfront NPV (net present value) payment. Susan Allen, Executive Vice President of The Drew Company, a local developer, pointed out that longer payment periods allow developers to treat the cost of the subsidized units as an operating expense, rather than a capitalized development cost.<sup>75</sup> In Boston, developers were previously able to make payments over a twelve-year period; it is now only seven years. The City benefits from an extended payment schedule because of the certainty of the income stream over time. However, Sheila Dillon would like the IDP to formally offer an option for developers to make one payment up-front, like the linkage program allows.<sup>76</sup>

The Boston Redevelopment Authority (BRA) uses money collected through IDP payments to create or preserve affordable housing by subsidizing individual projects and funding BRA programs like the Rental Housing Acquisition Program and the Affordable Housing Acquisition Fund.<sup>77</sup> Applications for project funding are accepted on an ongoing, rolling basis, and funds are distributed competitively. Eligibility requirements include:<sup>78</sup>

- Private, public, non-profit and for-profit development entities or individuals current in taxes
- No record of arson, fair housing violations, or other defaults
- Projects can be homeownership, rental, cooperative, or other forms of permanent housing
- Projects can be new construction, rehabilitation of existing affordable housing, or a conversion of a non-residential property
- Minimum affordability length of 50 years
- Developer must have site control and be able to demonstrate financial feasibility of the project



- Must meet a “but for” test – without IDP funding, the project would not be feasible
- The money will only be put towards units that are affordable under the IDP Executive Order

Projects are further evaluated according to seven criteria, including the amount of IDP resources requested, energy costs, and location “in an area of the City with less than the citywide average of affordable housing or in areas of the City that demonstrate a need for producing and/or preserving affordable housing.”<sup>79</sup> The BRA Board then votes and commits funds to certain projects. In 2006, the City of Boston decided to target the money collected through the IDP to specific geographic locations. This was the same year that the in-lieu fee increased from \$97,000 to \$200,000 per affordable unit. The city’s housing stock was 20% affordable, so half of the IDP funds collected on each project was “reserved for housing production or preservation” in geographic areas that had less than 20% affordable housing. The other half of a project’s fee payment could be used anywhere in the City. However, it was not clear how these geographic areas were defined, and I am not sure how the IDP funds were set aside; The documents I obtained from the City tracking the IDP money collected did not list information for which affordable housing project received a market-rate project’s IDP payment.

Yanni Tsipis, a development consultant at Colliers International, is supportive of flexible alternatives to on-site construction under inclusionary zoning, because flexibility is essential for making development projects viable.<sup>80</sup> In most neighborhoods, using in-lieu fees as leverage in affordable projects is more efficient than on-site construction, and it is easier to redeploy the capital in moderate-income areas. Take for example a 33-unit project that triggers construction of 5 affordable units on-site or payment of \$1,000,000; Mr. Tsipis argues that using that money to fill a financing gap for a project with 200 affordable units is more desirable, because you get 195 more affordable units for the same amount of money. More expensive neighborhoods, like Back Bay and Beacon Hill, may benefit from on-site construction of affordable units because it is more efficient in these particular locations.

My interviewees agreed that the projects financed with in-lieu fees are likely to be located in lower-income neighborhoods. Mr. Tsipis stated this reflects the pragmatic realities of what stuff costs to build, and that affordable housing is built where the need is greatest, and where there are low land/construction costs to justify its creation.<sup>81</sup> Tom Calahan, the Executive Director of MAHA, pointed out that Boston is fortunate to have a well-established network of CDCs that are aggressive about applying for funding.<sup>82</sup> Such organizations tend to be concentrated in low- and moderate-income neighborhoods, but there are more opportunities in those neighborhoods given the number of city-owned parcels and the different cost of land assembly. Sheila Dillon acknowledged that the projects

financed with in-lieu fees tend not to be built in more expensive downtown locations, but low- and moderate-income neighborhoods.<sup>83</sup> The problem is there are no CDCs applying for money for affordable housing projects in more expensive parts of town. This is due to high land costs, which can reach \$100,000 per unit.

How does the BRA determine which projects receive IDP funds? Mr. Tsipis states that it is often about good timing, if projects inquire about gap financing and the BRA happens to have some money.<sup>84</sup> Ms. Dillon says the city prioritizes projects that are ready to start, because of the immediate job creation potential.<sup>85</sup> The City is anticipating collecting a significant amount of IDP money soon due to the ramping up of the real estate market, and Ms. Dillon stresses the importance of thinking strategically about setting funding priorities in advance and thinking about how to let non-profit housing developers know what is coming in.

Boston is the only city examined in this paper with no set geographic limit on the location of off-site affordable units in relation to the market-rate project. Several of my interviewees discussed the possibility of setting such requirements for in-lieu fees, since off-site construction is a rarity. For instance, Dharmena Downey, Executive Director of the Fenway CDC, wants to see money collected through market-rate projects built in the Fenway be set aside for affordable projects in the neighborhood. Fenway is in a unique position – it is close to Downtown Boston, the site of many of the city's educational and cultural institutions, and currently facing a lot of development pressure. Ms. Downey feels like the Fenway is being swallowed whole in the name of progress, and she fears the neighborhood will become racially unbalanced as it exports families to more affordable neighborhoods like Mattapan and Dorchester.<sup>86</sup>

Ms. Downey would like Boston to develop a mechanism for developers of different projects to pool their funds together so the money can stay in specific neighborhoods. She also proposes adoption of a recycling strategy – for instance, lending the money at 0% interest to affordable projects that are shovel-ready, which will pay back the BRA, which can then fund more affordable projects. As stated by Tom Calahan of MAHA, not every neighborhood in Boston is the same, and the IDP needs to be examined for how responsive it is to a variety of neighborhoods.<sup>87</sup> The issue of location of affordable units cuts across ideological lines. A private developer I spoke with would also like to see some of the cash contributions reserved for the neighborhood in which the market-rate project is located, rather than going into a general pool that is not neighborhood-specific.<sup>88</sup> Kenan Bigby, Project Manager at Trinity Financial, would also prefer for Boston to spend funds in the target area so as to avoid creating



extremes of market-rate development and affordable development across the city.<sup>89</sup> Thus, a flexible IDP is desirable, but funds should be used in a geographically targeted manner.

A concern frequently stated was the lack of reporting by the BRA regarding the fate of in-lieu fees. If a City is going to include flexible alternatives to satisfying IZ requirements, it has an obligation to inform the public what happens. Some people expressed concern that the BRA lets the money build up, and Susan Allen of The Drew Company would like to see unused payments be redistributed to private developers if not committed in a certain period of time.<sup>90</sup> Santa Monica's Affordable Housing Production Program features such a restriction – after five years, in-lieu fee payments must be given back to developers if uncommitted. Joe Kriesberg, President of MACDC, wants to know what the IDP outcome has been on every development project – how many units were built on-site, and how much money was paid in-lieu of construction. How did the BRA spend the money? There is no reason to believe the BRA is mismanaging it, but more transparency is desired.<sup>91</sup>

Mr. Kriesberg cited the Neighborhood Housing Trust (NHT) as a model for the IDP. Linkage payments are deposited in the NHT, which is governed by a board. Developers apply for funds, and decisions are made following a public discussion. Noah Maslan, Director of Real Estate for the nonprofit Urban Edge, proposes placing the IDP under the purview of the Boston Department of Neighborhood Development (DND), which runs other housing programs.<sup>92</sup> It is redundant to create two separate capacities to allocate housing dollars, and the NHT is staffed by DND. Tom Calahan, Executive Director of MAHA, and Kathy Brown of the Boston Tenant Coalition also favor Boston's linkage policy due to a greater level of transparency.<sup>93</sup>

## 6.6 PRODUCTION ANALYSIS

Over the past ten years, Boston's housing supply has increased by nearly 20,000 new units. That this was accompanied by a population increase of more than 28,000 people indicates a housing production shortfall – one unit was constructed for every 1.4 new residents.<sup>94</sup>

Table 4-6 shows where affordable housing is distributed across the City of Boston. Using information from the BRA, as showcased in *The Boston Economy 2005*, I calculated the percentage of affordable units by neighborhood by combining information about projects completed between 2000 and 2004 and projects under construction or approved as of 2005. Although not all of the projects approved as of 2005 may have been completed, the data is useful because it provides a general sense of where



affordable housing tends to be built, or planned for, in the city. The median household income is from Boston's Department of Neighborhood Development Neighborhood Profiles, which uses 1999 income data.<sup>95</sup> Note that the Boston Redevelopment Authority (BRA) listed projects in neighborhoods that the DND has not profiled; therefore, some neighborhoods are missing income information.

**Table 4 - 6: Boston Housing by Neighborhood**

Neighborhood	Total Projects	Total Units	Affordable Units	% Affordable	Median Household Income
<b>Mattapan</b>	2	68	68	100%	\$32,749
<b>Mission Hill</b>	2	58	58	100%	--
<b>Roxbury</b>	4	192	160	83%	\$27,133
<b>West Roxbury</b>	4	182	108	59%	\$54,860
<b>Jamaica Plain</b>	5	203	85	42%	\$41,524
<b>Chinatown</b>	3	319	121	38%	--
<b>Allston/Brighton</b>	5	345	126	37%	\$38,941
<b>East Boston</b>	2	291	106	36%	\$31,311
<b>Beacon Hill</b>	1	75	19	25%	\$66,428
<b>North Station</b>	1	108	20	19%	--
<b>Waterfront</b>	2	1,034	177	17%	--
<b>West End</b>	2	336	49	15%	--
<b>Fenway/Kenmore</b>	8	713	97	14%	\$25,401
<b>Back Bay</b>	8	1,124	158	14%	\$66,428
<b>Dorchester</b>	3	392	52	13%	\$37,925
<b>Leather District</b>	1	85	11	13%	--
<b>South Boston</b>	12	992	107	11%	\$40,312
<b>South End</b>	15	878	94	11%	\$41,590
<b>Charlestown</b>	1	117	12	10%	\$56,111
<b>Midtown</b>	4	1,253	131	10%	--
<b>Roslindale</b>	2	42	4	10%	\$46,847
<b>Downtown</b>	6	415	21	5%	--
<b>Hyde Park</b>	5	261	15	6%	\$44,705
<b>North End</b>	2	157	6	4%	--
<b>Park Plaza</b>	1	225	--	0%	--

Source: *The Boston Economy 2005*<sup>96</sup>

The median affordable housing share is 14%, while the average is 28%. This is because certain neighborhoods, namely Mattapan, Mission Hill, and Roxbury, have considerably higher shares of affordable housing completed or planned in the past decade. The city's median household income in 1999 was \$39,629, which both Mattapan and Mission Hill fall below.

How much money does the IDP raise? In a document collected from the City of Boston, the BRA has collected over \$31.4 million in IDP funds, and is owed an additional \$5.6 million.<sup>97</sup> \$29.7 million of this has been committed.<sup>98</sup> Unfortunately, the document I collected does not include information about the number of market-rate or affordable units in each project. However, it does contain neighborhood information, which is summarized in Table 4-7 below.

**Table 4 - 7: IDP Funds Committed by Neighborhood**

Neighborhood	Number of projects receiving funding	Total amount committed	Average amount committed
<b>Roxbury</b>	8	\$3,296,758	\$412,095
<b>Dorchester</b>	7	\$1,206,800	\$172,400
<b>Hyde Park</b>	5	\$1,558,900	\$311,780
<b>Jamaica Plain</b>	4	\$1,967,307	\$491,827
<b>South Boston</b>	4	\$2,576,200	\$644,050
<b>Chinatown</b>	3	\$3,217,252	\$1,072,417
<b>Various</b>	3	\$1,108,000	\$369,333
<b>Allston Brighton</b>	2	\$975,000	\$487,500
<b>Roslindale</b>	2	\$1,125,000	\$562,500
<b>South End</b>	2	\$818,513	\$409,257
<b>All</b>	2	\$1,000,000	\$500,000
<b>Fenway</b>	1	\$2,910,000	\$2,910,000
<b>East Boston</b>	1	\$1,560,000	\$1,560,000
<b>Mattapan</b>	1	\$190,000	\$190,000
<b>Mission Hill</b>	1	\$190,000	\$190,000
<b>South End/BB</b>	1	\$610,000	\$610,000
<b>South End/Fen</b>	1	\$535,000	\$535,000
<b>Miscellaneous</b>	1	\$20,000	\$20,000
<b>Total</b>	49	\$24,864,730	\$24,864,730

*Source: IDP Funds Collected (paid in full)*



The additional \$5 million that has been committed is dedicated for projects in the pipeline, administrative expenses, and the RHAP fund. 24% of committed IDP funds and 41% of projects receiving funding are located in Roxbury, Dorchester, and Hyde Park, which are also known to be some of Boston's poorest neighborhoods. These results indicate that the in-lieu fees do tend to be used for affordable housing in lower-income neighborhoods, meaning the IDP is not achieving broader socioeconomic integration.

For comparison, in 2003 the city's linkage policy represented \$15,640,749 of the total funding for housing sponsored by the City/Boston Housing Authority. That is 7% of the \$217,891,957 in public investment funds.<sup>99</sup> The most recent report of the Neighborhood Housing Trust, which manages linkage money, was released in 2010. As of 2010, the city had used a total of \$81 million in linkage funds to create 7,647 total units, 6,159 of which are affordable, in 115 projects.<sup>100</sup> Linkage has been around since 1983, and the IDP was formally established in 2000. On average, the linkage program has raised \$3 million per year for affordable housing and created 228 affordable units per year between 1983 and 2000. Between 2000 and 2010, the IDP raised \$2.85 million per year for affordable housing, and created an unknown number of on-site units.

It is difficult to discern how productive the IDP has been. How effectively has it created affordable housing in Boston? Between 2000 and 2010, 20,500 housing units were built in Boston, with 5,500 (26.8%) affordable to low- and moderate-income households.<sup>101</sup> The most recent production statistics I could find for the IDP is from the 2009 *Leading the Way III* report (LTWIII), which states that 896 units have been produced and \$15 million has been collected.<sup>102</sup> It is not clear if these 896 units have been built on-site and/or off-site. Considering only the 896, the IDP accounted for 16.3% of total affordable housing production in the City over the past decade. This demonstrates that the policy is not highly productive, but still a significant source of affordable housing. However, it is most accurate to determine the productivity of IZ based on the units created on- and off-site. How many affordable units have been produced with the \$15 million? The information I received from the city does not include unit totals. However, I would like to note that by the end of 2010, according to documents from the BRA, \$24.6 million – considerably more than was stated in *LTWIII* – in IDP monies had been approved for affordable projects.<sup>103</sup>

Not all of the money collected has been committed yet. How many on-site affordable units were lost through the \$31.4 million that has been collected by the BRA? It is difficult to calculate, because each project's contribution tends to be a unique combination of on-site affordable units and fee payments.



Some developers have partnered with non-profits or combined IDP and linkage obligations. One developer I spoke with was partially fulfilling the IDP obligation by donating a site to a non-profit for affordable housing.<sup>104</sup> Another was able to pay fees at a lower level, the amount for which their initial project was approved; after the development underwent some changes because of the economy, the in-lieu fee amount had increased, but this developer was able to negotiate to pay the previous fee. Assuming cases like this are rare, though, it is possible to determine when each project was approved, what the in-lieu fee amount was in that year, and calculate how many units the payment was equivalent to.

I obtained a document detailing the market-rate projects that had bought out of the IDP and how much each owed and had paid in in-lieu fees. The city has determined that these 49 projects (41 of which have paid all the money owed, 8 of which have only partially paid) should pay a total of \$37,037,904. \$31.4 million has been paid so far, and \$5.6 is still owed. How many units should this \$37 million equal? How many on-site affordable units was the City willing to negotiate away in exchange for the financial contributions? To determine this, I researched the 49 projects listed in the document. I found the year most properties had been built through a combination of methods: most properties had their own websites, were written about in blogs and newspapers, posted on real estate websites, and/or featured in city-data.com's property valuation section. Using the years, I determined the in-lieu fee each project was most likely to pay – projects built between 2000 and 2004 paid \$52,000, and projects built in 2007 or later paid \$200,000. The fee was changed to \$97,000 in 2005, and existed so for one year; I assumed projects built in 2005 or 2006 were subject to the \$97,000 fee. I did this because some of the information found online referred to when the building opened, not when it received permits; I assumed that projects dated 2006 were likely to have been approved at the lower fee rate.

I was unable to find information for 12 projects, so I excluded them from my final calculations. These projects amounted to in-lieu fee payments totaling \$3.4 million. Therefore, my final calculations consider \$33.6 million from 37 projects. Working backwards, this \$33.6 million is equivalent to 235 on-site affordable units. If the city had always had a \$200,000 in-lieu fee, it could have raised \$47 million, \$13.4 million (40% more) than it did using lower fee amounts throughout the decade. This illustrates the importance of setting fees at a meaningful level.

I was also able to determine accurate neighborhood-level data for all but 9 of the projects. In other words, I was able to see where the 40 projects that bought out were located. Where was affordable housing *not* being built in the City of Boston? Although this report outlines solid reasons to support

flexibility and off-site construction in IZ ordinances, it is still a controversial outcome. To truly understand the results (and missed results) of the IDP, it is necessary to know neighborhood-level information. The results are summarized in Table 4-8 below:

**Table 4 - 8: Projects Buying Out of the IDP**

Neighborhood	Number of Projects Buying Out	Total Amount Owed	Average Amount Owed
<b>Allston Brighton</b>	4	\$376,980	\$94,245
<b>Back Bay</b>	2	\$1,277,000	\$638,500
<b>Chinatown</b>	6	\$3,219,652	\$536,609
<b>Dorchester</b>	2	\$59,424	\$29,712
<b>Downtown</b>	3	\$2,932,000	\$977,333
<b>East Boston</b>	1	\$1,560,000	\$1,560,000
<b>Fenway</b>	2	\$4,407,600	\$2,203,800
<b>North End</b>	1	\$432,000	\$432,000
<b>Roslindale?</b>	1	\$75,000	\$75,000
<b>South Boston</b>	5	\$248,248	\$49,650
<b>South End</b>	8	\$1,768,000	\$221,000
<b>Waterfront</b>	4	\$17,053,600	\$4,263,400
<b>West End</b>	1	\$1,843,000	\$1,843,000

On a numerical basis, the top three neighborhoods losing on-site affordable housing are the South End (8 projects), Chinatown (6), and South Boston (5). However, since many projects in Boston tend to satisfy the IDP with a combination of on-site units and fee payments, it is likely that the projects buying out in these neighborhoods are still constructing some affordable units on-site. It is not entirely accurate to judge the neighborhood effect by the amount of money paid, as the fees have changed over time. Additionally, these numbers need to be examined within the larger context: how many total projects were being built in each neighborhood? Although the South End, Chinatown, and South Boston may have the most projects buying out, they may also feature the most construction overall. Furthermore, the building sizes vary, from 9-unit adaptive reuse projects to 400-unit major new construction towers. The point is that while these numbers are interesting, they are not enough to make claims about definitive patterns in the IDP and its neighborhood-level impact.

<sup>1</sup> *The Boston Economy 2005* (Boston, MA: The Boston Redevelopment Authority, 2005), 19, <http://www.bostonredevelopmentauthority.org/pdf/ResearchPublications//Rpt604.pdf>; 2010 United States Census



- <sup>2</sup> *Leading the Way II - A Report on Boston's Housing Strategy FY 2004-FY 2007* (City of Boston, 2004), 1, [http://www.cityofboston.gov/Images\\_Documents/LTW\\_II\\_Strategic\\_Plan\\_tcm3-7921.pdf](http://www.cityofboston.gov/Images_Documents/LTW_II_Strategic_Plan_tcm3-7921.pdf).
- <sup>3</sup> *Leading the Way I Executive Summary* (City of Boston, December 2003), ii, [http://www.cityofboston.gov/Images\\_Documents/LTW\\_I\\_Executive\\_Summary\\_tcm3-7917.pdf](http://www.cityofboston.gov/Images_Documents/LTW_I_Executive_Summary_tcm3-7917.pdf).
- <sup>4</sup> *LTW II Report*, 1.
- <sup>5</sup> *LTW II Report*, 17.
- <sup>6</sup> *Leading The Way III - A Report on Boston's Housing Strategy for 2009-2012* (City of Boston, 2009), 3, [http://www.cityofboston.gov/Images\\_Documents/LTW\\_III\\_Strategic\\_Plan\\_tcm3-7923.pdf](http://www.cityofboston.gov/Images_Documents/LTW_III_Strategic_Plan_tcm3-7923.pdf).
- <sup>7</sup> *LTW III Report*, 10.
- <sup>8</sup> *LTW I Executive Summary*, ii.
- <sup>9</sup> Jenifer B. McKim, "In Tight Local Market, No Relief for Renters, Apartment Hunters," *The Boston Globe* (Boston, MA, January 26, 2012), [http://articles.boston.com/2012-01-26/realstate/30667416\\_1\\_rents-housing-advocates-boston-housing](http://articles.boston.com/2012-01-26/realstate/30667416_1_rents-housing-advocates-boston-housing).
- <sup>10</sup> Jenifer B. McKim, "Rents Hit a Record High in Hub Area," *The Boston Globe* (Boston, MA, July 25, 2011), [http://articles.boston.com/2011-07-25/business/29813507\\_1\\_foreclosure-crisis-rental-market-record-high-rents](http://articles.boston.com/2011-07-25/business/29813507_1_foreclosure-crisis-rental-market-record-high-rents).
- <sup>11</sup> "2010 U.S. Census", n.d., <http://www.census.gov/>.
- <sup>12</sup> *Ibid.*
- <sup>13</sup> *LTW II Report*, 53.
- <sup>14</sup> "Paycheck to Paycheck," *Center for Housing Policy*, n.d., <http://www.nhc.org/chp/p2p/>.
- <sup>15</sup> *LTW I Executive Summary*, ii.
- <sup>16</sup> "2006-2010 American Community Survey 5-Year Estimates - DP04. Selected Housing Characteristics," *American Fact Finder*, n.d., [www.census.gov](http://www.census.gov).
- <sup>17</sup> *LTW II Report*, 55.
- <sup>18</sup> *LTW III Report*, 6.
- <sup>19</sup> "Analysis of Impediments to Fair Housing Choice" (City of Boston, June 2010), 43, [http://www.cityofboston.gov/Images\\_Documents/Boston%20AI%20Press%20PDF%20Version\\_tcm3-16790.pdf](http://www.cityofboston.gov/Images_Documents/Boston%20AI%20Press%20PDF%20Version_tcm3-16790.pdf).
- <sup>20</sup> *Ibid.*, 44.
- <sup>21</sup> McKim, "In Tight Local Market, No Relief for Renters, Apartment Hunters."
- <sup>22</sup> Jim Cronin, "Greater Boston Commercial Construction Down, Residential Up in Jan.," *Banker & Tradesman*, March 1, 2012, <http://www.bankerandtradesman.com/news148869.html>.
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- <sup>30</sup> "Neighborhood Housing Trust" (City of Boston, 2010), 5, <http://www.cityofboston.gov/dnd/pdfs/NHT.pdf>.
- <sup>31</sup> Dreier and Erlich, "Downtown Development and Urban Reform: The Politics of Boston's Linkage Policy," 369.



- <sup>32</sup> Tom Calahan, phone interview, March 8, 2012.
- <sup>33</sup> Joe Kriesberg, in-person interview, February 23, 2012.
- <sup>34</sup> Anonymous private developer in Boston, in-person interview, February 29, 2012.
- <sup>35</sup> *Mayor Menino Boosts Affordable Housing Requirements* (Boston, MA: Boston Redevelopment Authority, May 1, 2006), <http://www.bostonredevelopmentauthority.org/press/PressDisplay.asp?pressID=306>.
- <sup>36</sup> *Menino Boosts Requirements*, 1.
- <sup>37</sup> *The City of Boston's Inclusionary Development Program; BRA Response*.
- <sup>38</sup> *BRA Response*.
- <sup>39</sup> Meg Kiely, "Boston's Policy Gives Developers Choice," "Inclusionary Zoning: Lessons Learned in Massachusetts," *NHC Affordable Housing Policy Review* 2, no. 1 (January 2002): 26, [http://www.nhc.org/media/documents/IZ\\_lessons\\_in\\_MA.pdf](http://www.nhc.org/media/documents/IZ_lessons_in_MA.pdf).
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- <sup>57</sup> private developer in Boston, interview.
- <sup>58</sup> *The City of Boston's Inclusionary Development Program*, 3.
- <sup>59</sup> Rezendes and Healy, "City Tries Closing Gap in Affordable Housing Efforts."
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- <sup>61</sup> *The City of Boston's Inclusionary Development Program*, 4.
- <sup>62</sup> Calahan, interview.
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- <sup>69</sup> Cara Bayles, "Reserve Channel Condos May Get \$150K for Repairs," *Boston.com*, March 10, 2011, [http://www.boston.com/yourtown/news/south\\_boston/2011/03/reserved\\_channel\\_condo\\_develop.html](http://www.boston.com/yourtown/news/south_boston/2011/03/reserved_channel_condo_develop.html).
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- <sup>72</sup> Susan Allen, in-person interview, February 22, 2012.
- <sup>73</sup> Kriesberg, interview.
- <sup>74</sup> Calahan, interview.
- <sup>75</sup> Allen, interview.
- <sup>76</sup> Dillon, interview.
- <sup>77</sup> Penniman, *Building Better: Recommendations for Boston's Inclusionary Development Policy*, 12.
- <sup>78</sup> *Inclusionary Development Funding (IDF) Policy Guidelines* (Boston, MA: Boston Redevelopment Authority, July 2009), [http://www.bostonredevelopmentauthority.org/affordhousing/Funding Guidelines for IDF.pdf](http://www.bostonredevelopmentauthority.org/affordhousing/Funding%20Guidelines%20for%20IDF.pdf).
- <sup>79</sup> Ibid.
- <sup>80</sup> Tsipis, interview.
- <sup>81</sup> Ibid.
- <sup>82</sup> Calahan, interview.
- <sup>83</sup> Dillon, interview.
- <sup>84</sup> Tsipis, interview.
- <sup>85</sup> Dillon, interview.
- <sup>86</sup> Downey, interview.
- <sup>87</sup> Calahan, interview.
- <sup>88</sup> private developer in Boston, interview.
- <sup>89</sup> Bigby, interview.
- <sup>90</sup> Allen, interview.
- <sup>91</sup> Kriesberg, interview.
- <sup>92</sup> Noah Maslan, in-person interview, February 24, 2012.
- <sup>93</sup> Calahan, interview; Kathy Brown, in-person interview, March 14, 2012.
- <sup>94</sup> "Why Does It Cost so Much to Live in Boston?"
- <sup>95</sup> "Maps & Neighborhood Profiles," *Boston Redevelopment Authority*, n.d., [http://www.cityofboston.gov/dnd/PDR/Maps\\_and\\_Neighborhood\\_Profiles.asp](http://www.cityofboston.gov/dnd/PDR/Maps_and_Neighborhood_Profiles.asp).
- <sup>96</sup> *The Boston Economy* 2005.
- <sup>97</sup> "IDF Funds Collected (paid in Full)" (City of Boston, 2012).
- <sup>98</sup> "IDF Money Committed" (City of Boston, 2012).
- <sup>99</sup> *Leading the Way I Completion Report - Boston's Housing Strategy FY 2001-2003* (City of Boston, 2003), 6, [http://www.cityofboston.gov/Images\\_Documents/LTW\\_I\\_Completion\\_Report\\_tcm3-7916.pdf](http://www.cityofboston.gov/Images_Documents/LTW_I_Completion_Report_tcm3-7916.pdf).
- <sup>100</sup> "Neighborhood Housing Trust," 10.
- <sup>101</sup> "Hub Mayor Touts City's Housing Production Efforts," *The Boston Herald*, April 12, 2011, [http://bostonherald.com/business/real\\_estate/view/2011-0412hub\\_mayor\\_touts\\_citys\\_housing\\_production\\_efforts](http://bostonherald.com/business/real_estate/view/2011-0412hub_mayor_touts_citys_housing_production_efforts).
- <sup>102</sup> *LTW III Report*, 1.
- <sup>103</sup> "IDF Money Committed."
- <sup>104</sup> private developer in Boston, interview.



## 05. CASE #2 - LOS ANGELES

### 5.1 DATA & DEMOGRAPHICS

In 2010, the City of Los Angeles had a total population of 3,792,621. The city's residents are diverse: 49.8% white, 9.6% African American, 11.3% Asian, 23.8% other, and 4.6% two or more races.<sup>1</sup> 48.5% of respondents (of any race) identified as Hispanic or Latino.

Below, Table 5-1 compares Los Angeles to three adjacent cities that have adopted official IZ ordinances. Why have the other three cities been able to establish IZ, but Los Angeles has not? It may have more to do with politics, but it is interesting to note that Los Angeles is far larger, both geographically and population-wise, than the neighboring cities. Its median household income is also less, and a larger share of its population has an income below the poverty level.

**Table 5 - 1: Los Angeles Area Municipality Comparison**

	Los Angeles	Santa Monica	West Hollywood	Pasadena
Population <sup>2</sup>	3,792,621	89,736	34,399	137,122
Median Household Income <sup>3</sup>	\$49,138	\$68,842	\$52,000	\$65,422
Area (mi <sup>2</sup> ) <sup>4</sup>	468.7	8.4	1.9	23.0
Population Density (people per mi <sup>2</sup> )	8,092	10,683	18,105	5,962
Percentage of People Whose Income in the Past 12 months Is Below the Poverty Level <sup>5</sup>	19.5%	11.1%	13.2%	13.5%

One of the claims about IZ stated most often is that it is a strategy best suited for jurisdictions with strong real-estate markets. How do these four cities' markets compare? According to Zillow, the current home value in Los Angeles is \$361,000, \$513,000 in Pasadena, \$855,500 in Santa Monica, and \$468,800 in West Hollywood. Trends for median rental values are similar: the median value for the City of Los Angeles is \$2,090 per month, according to the April 2012 Zillow Rent Index.<sup>6</sup> Values in neighboring cities are higher: \$2,314 in Pasadena \$2,488 in West Hollywood, and up to \$3,569 in Santa Monica. Perhaps one reason the City of Los Angeles has failed to implement a citywide IZ



ordinance, despite neighboring cities' successes, is related to its weaker housing market – if market strength can be judged based on these statistics.

A household earning the median income in each of these four cities would not be able to afford the median apartment. In Los Angeles, the median household income of \$49,138 corresponds to a monthly income of approximately \$4,095, 30% of which is \$1,228. Given a median rent of \$2,090 per month, a household earning the median income would be paying 51% of monthly income on rent. However, residents of the City of Los Angeles face a smaller rent burden than those in Santa Monica and West Hollywood, as shown in Table 5-2. However, a larger share of Los Angeles residents pay more than 30% of their income for housing compared to the other three cities, indicating that LA could benefit from an IZ ordinance.

**Table 5 - 2: Housing Unaffordability in the Los Angeles Area**

	<b>Los Angeles</b>	<b>Pasadena</b>	<b>Santa Monica</b>	<b>West Hollywood</b>
<b>Annual Median Household Income</b>	\$49,138	\$65,422	\$68,842	\$52,009
<b>Corresponding Monthly Income</b>	\$4,095	\$5,452	\$5,737	\$4,334
<b>Affordable Rent</b>	\$1,228	\$1,636	\$1,721	\$1,300
<b>Median Rent</b>	\$2,090	\$2,314	\$3,569	\$2,488
<b>Gap</b>	-\$862	-\$678	-\$1,848	-\$1,188
<b>Rent as % of Monthly Income</b>	51%	42%	62%	57%
<b>Renters Paying More than 30% of Household Income For Rent<sup>7</sup></b>	58.1%	51.6%	46.5%	50.4%

LA's 58.1% of burdened renters is equivalent to 445,664 households. 49.0% of all renters (376,077 total) are paying more than 35% of income for rent. Homeowners in Los Angeles face housing affordability burdens too: as of 2010, 49.9% (253,091 households) of owners devoted more than 30% of household income for monthly costs. Overall, 54.8% of LA's population, including both renters and owners, faces a housing affordability burden. Housing unaffordability has worsened over the past decade.

The Center for Housing Policy has created Paycheck to Paycheck, an online database of wage and housing price information that can be used to visualize annual incomes for specific industries and job

types in comparison to housing costs in specific cities. The rental and homeownership affordability gaps for the third quarter of 2011 in Los Angeles are shown in Figures 5-1 and 5-2. None of the job types examined earn an annual wage that is sufficient to purchase the median-priced home or rent a 2-bedroom apartment in the city.

Figure 5 - 1: Third Quarter 2011 Homeownership Market

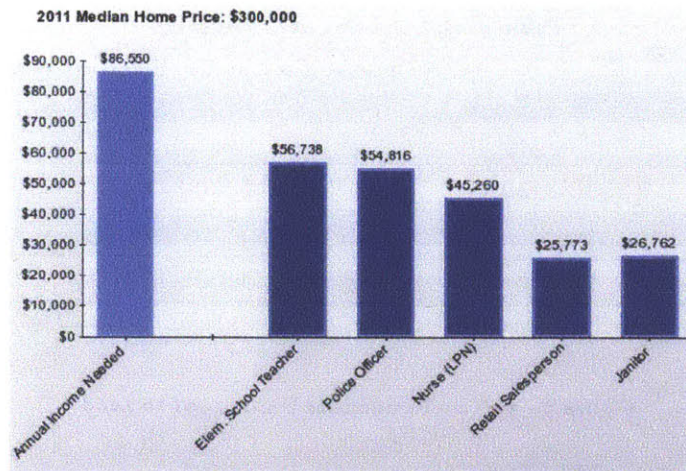
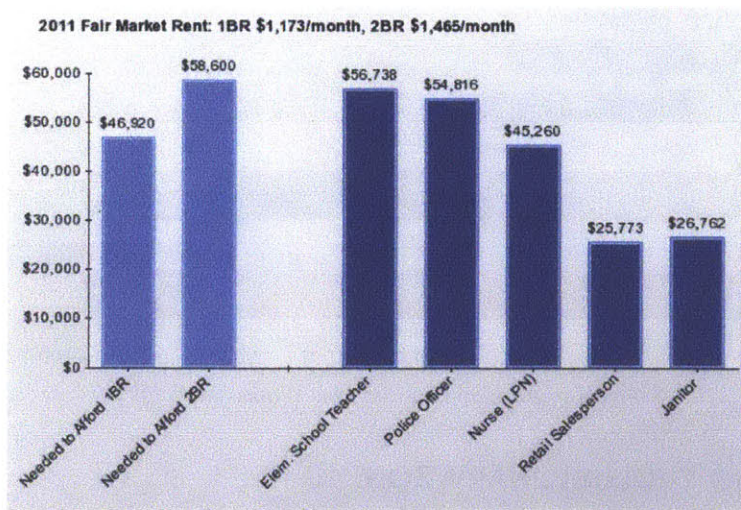


Figure 5 - 2: Third Quarter 2011 Renter Market



Source: Paycheck to Paycheck: Los Angeles, CA (The Center for Housing Policy)<sup>8</sup>

Part of the housing unaffordability issue in Los Angeles is due to production shortfalls. Between July 1998 and June 1999, the City's population increased by 65,000 people, but only 1,940 net new housing units were built.<sup>9</sup> A 2000 report issued by the Los Angeles Housing Crisis Task Force reported statistics about land use in the city, as seen in Table 5-3 below. This illustrates the need for



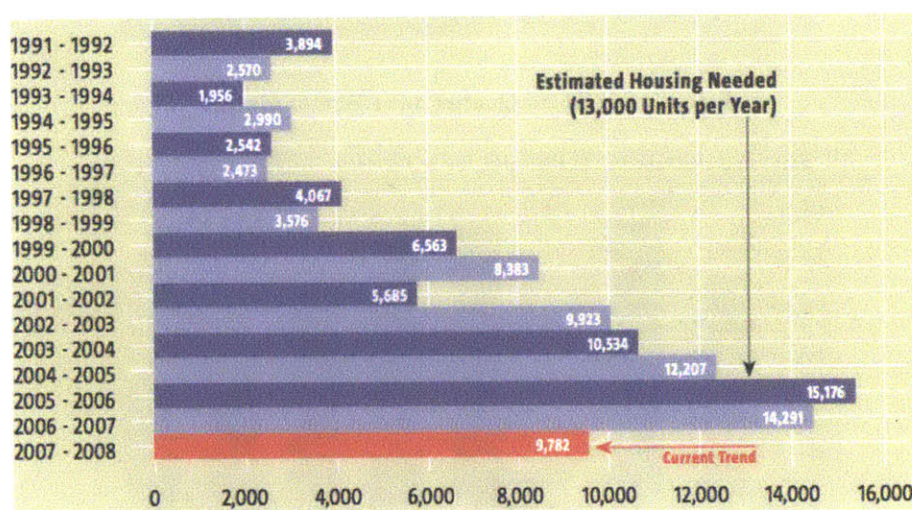
more multifamily housing in Los Angeles, as 61% of the population in 2000 was living on 15% of the residential land. Figure 5-3 follows, showing the city's history of housing production shortfalls. In 1990, the City's population was 3,485,398<sup>10</sup> By 2010, it had reached 3,792,621, an increase of 307,223 individuals in two decades. Adding up the information in Figure 5-3 shows that between 1991 and 2008, 116,612 units were built – approximately 1 unit for every 2.63 people.

**Table 5 - 3: Land Use in Los Angeles**

Category	Acres	Percent	People Living There
<b>Total land area</b>	300,005 (469 sq miles)	100%	3.8 million
<b>Residential uses</b>	124,822 (42%)	42% of total land area	3.8 million
<b>Single-family use</b>	104,884	85% of residential land	1.5 million
<b>Multi-family use</b>	19,938	15% of residential land	2.3 million

Source: *In Short Supply: Recommendations of the Los Angeles Housing Crisis Task Force (2000)*<sup>11</sup>

**Figure 5 - 3: New Residential Units, 1991 to 2008**



Source: *Los Angeles: Housing That Works, 2008-2013*<sup>12</sup>

## 5.2 ESTABLISHING INCLUSIONARY ZONING

In California, every jurisdiction is required to create and seek certification for a Housing Element within its comprehensive General Plan. Although this is not a judicial mandate for inclusionary programs, as in New Jersey, it does show a consideration at the state-level for providing housing affordable to all income levels. Unfortunately, the state's Department of Housing and Community Development only has the power to review Housing Elements, not to force change. In 1979, California



passed a Density Bonus Law that effectively created a voluntary system of inclusionary housing within municipalities. In 2004, SB 1818 amended this law to provide a range of density bonuses depending on the percentage of affordable units in a development (a minimum of 10% low, 5% very-low, or 10% moderate).<sup>13</sup> The state's redevelopment law also served as a form of inclusionary zoning, because at least 15% of housing constructed in redevelopment areas had to be affordable.

In 1995, the City of Los Angeles adopted its own density bonus ordinance, the Affordable Housing Incentive Program, to supplement the 25% bonus mandated in state law by providing parking reductions and expedited processing and fee waivers. In 2003, the City passed an ordinance that gave developers of projects near transit stops and major economic centers up to a 35% density bonus in exchange for providing some affordability.<sup>14</sup> Though Los Angeles does not have a mandatory citywide IZ ordinance, it does have mandatory inclusionary requirements in specific parts of the city, such as the Central City West Specific Plan, Playa Vista, and the Coastal Zone (as mandated by the state's Mello Act).<sup>15</sup> As noted in the previous section, many smaller cities adjacent to Los Angeles, including Santa Monica, West Hollywood, and Pasadena, do have mandatory inclusionary ordinances.

In Los Angeles, land use decisions in neighborhoods are governed by individual Specific Plans. In 1990, a neighborhood adjacent to downtown LA adopted mandatory inclusionary requirements as a component of the Central City West Specific Plan (CCWSP). Residential developers of properties with 10 or more units were required to set aside 15% of their units as affordable to households with incomes between 30% and 80% AMI or replace any very low- and low-income units demolished on the site after February 13, 1988 – whichever would yield the greater number of affordable units. The CCWSP also provided a third manner of compliance: paying an in-lieu fee. Unlike most in-lieu fee provisions, this plan maintained two separate fees depending on the income level to which the unit was restricted. Developers received no additional special benefits for complying with the inclusionary requirement, because the CCWSP dramatically up-zoned what could be built in the neighborhood.<sup>16</sup> By loosening up development constraints, developers were able to build more overall.

Despite multiple attempts, the City of Los Angeles has never adopted a citywide IZ ordinance. In 1999, the City Council established a Housing Crisis Task Force, which recommended establishing a Housing Trust Fund and an IZ policy. In 2000, the Housing Department began to investigate adoption of an IZ ordinance. In 2002, Mayor Hahn committed \$100 million to the Trust Fund; by 2004, \$86 million of this had been used to create 2,475 affordable units in 38 properties.<sup>17</sup> In April

2004, City Councilmembers Ed Reyes and Eric Garcetti proposed an IZ ordinance for the city. Four months later, a report was released by the Los Angeles Housing Department (LAHD), the Planning Department, and the Community Redevelopment Agency (CRA) proposing an IZ ordinance to produce units affordable to residents earning between 30% and 120% of AMI, or \$17,850 to \$71,400 per year for a family of four.<sup>18</sup> This is a very broad range; most other inclusionary programs do not serve very low-income populations.

The main opponents of mandatory IZ in Los Angeles were the Central City Association (CCA) and the Los Angeles/Ventura chapter of the Building Industry Association (BIA-L/V). Rather than opposing any type of inclusionary ordinance, the two groups decided to create an alternative plan; Greg Vilkin, Managing Principal and Partner at MacFarlane Partners, praised the uniqueness of this strategy for its distinction from the traditional ‘developer versus advocate’ approach.<sup>19</sup> The CCA is a downtown business organization, not a development organization, and its membership recognized the need for their employees to have access to lower-cost housing. In the summer of 2003, the CCA convened a working group to develop incentives for private developers to build affordable units on their own.<sup>20</sup> In August 2004, the *Housing For All* plan was released, proposing by-right incentives for developers; if developers chose not to take advantage of incentives, there was no obligation to build affordable housing.<sup>21</sup>

*Housing For All* (HFA) focused on flexibility and neighborhood control, rather than a “one-size fits-all” approach.<sup>22</sup> Incentives included increased density, improved processing time, and more flexibility; if providing affordable units worked for developers, they could elect to build mixed-income projects. HFA also proposed a housing bond, which was premised on the notion that if the city intended to increase the supply of affordable housing, then the cost associated with that should be borne by the citizenry, rather than private developers.<sup>23</sup> The plan also proposed creation of a secondary market for affordable units.<sup>24</sup> For instance, San Jose permits developers to purchase each other’s affordable housing obligations. Irvine operated a similar program, but it became less effective as the city’s real estate market became less active.

According to Isela Gracian, the Associate Director of the East Los Angeles Community Corporation (ELACC), the non-profit community also worked together to develop language and policies for a citywide IZ ordinance.<sup>25</sup> The Southern California Association of Non-Profit Housing (SCANPH) organized a coalition, Housing LA, which aimed to also build support among the city’s low-income



residents through campaigns led by base-building organizations.<sup>26</sup> Additionally, rather than waiting for the city to develop their own language for an inclusionary ordinance, Housing LA worked to do so on their own. Some details regarding income percentages, AMI, and in-lieu fees were worked out, and coalition-members began to go around City Council offices to review the policy points. They paused their efforts due to the Palmer decision, which is explored in section 5.2.1, but had already been struggling to gain the amount of council support necessary to pass an IZ ordinance.

According to Ms. Gracian, one of the biggest challenges faced by Housing LA was reaching consensus around the level of affordability. City councilmembers were comfortable with a level that did not go deep enough for many of the coalition's base-building organizations. Developers refused to support a policy with deeper affordability, because it was not financially viable to subsidize units for very low-income residents. However, this meant that the ordinance was being shaped in a manner that would not reach many of Housing LA's constituents. ELACC was supportive of using IZ to create units at the extremely low-income level, because the most vulnerable populations that earn the lowest incomes face the greatest challenges in having quality, healthy housing that is located in an environment that supports family success. Ms. Gracian recalls that Housing LA proposed an IZ ordinance with a 20% set-aside and various combinations of affordability, with a maximum of 80% AMI and a minimum of 30% AMI.<sup>27</sup>

In October 2007, Mayor Villaraigosa announced that he planned to push the City Council to adopt a citywide IZ ordinance.<sup>28</sup> In 2008, the City released a comprehensive housing plan that proposed a Mixed Income Housing Ordinance (MIHO). The term MIHO was chosen because it sounded less provocative than inclusionary zoning, which had been received quite negatively.<sup>29</sup> Nineteen people were appointed to a Technical Advisory Task Force, but a year later, a decision was made in the *Palmer* case that prohibited imposing an inclusionary requirement on rental units. Holly Schroeder, CEO of the BIA-L/V, believes that at the time, LA had yet to dramatically feel the fiscal impacts of the changing economy. It was soon realized, however, that the housing market was undergoing a major change, and that IZ was not an appropriate policy to implement when the building industry was in a depression.<sup>30</sup> Furthermore, political pressure around affordable housing in the City declined.<sup>31</sup>

Naomi Guth, of the Los Angeles Department of City Planning, supposes that political support for a re-examination of MIHO could appear given the recent elimination of California's redevelopment agencies.<sup>32</sup> However, adding another fee may not be politically palatable at this time. As noted by Ms.



Gracian, before the recession, the City was already pro-development and focused on moving projects through the pipeline faster and easier. Mayor Villaraigosa and his staff did not want to make it more difficult on the development community, and the private for-profit developers invoke this line of reasoning for pushing back on any policies that would burden them or require affordability.<sup>33</sup>

According to Blake Lamb of the Los Angeles Department of City Planning, the City is currently looking into implementing something similar to a linkage fee.<sup>34</sup> Ms. Guth has files regarding linkage proposals dated as far back as 1990.<sup>35</sup> In August 2007, the City Council authorized an RFQ for a consultant to study a citywide Affordable Housing Benefit Fee (AHBF). The idea behind the AHBF is to explore whether the city wants to adopt a program to add a fee on all development to support the construction of affordable housing. Consultants were tasked with completing a nexus study analyzing the connection between development of all types and the demand for affordable housing; to the extent that there is a relationship, what fee amount is supportable? This study is now complete, but not available publicly. The City has not yet decided whether or not it will adopt an AHBF program. If an AHBF program is established, funds collected would be deposited in the city's Affordable Housing Trust Fund, so as to create a local revenue source for it. Currently, money for the fund is limited to HUD formula grants; before the recession and budget crisis, there was also some money from the City's General Fund. Another benefit of the AHBF is that it works around a bias of IZ that it burdens residential developers, and not other developers.

### **5.2.1 The *Palmer* court case**

Inclusionary requirements in the Central City West Specific Plan (CCSWP) led to the Palmer court case, the effects of which have been felt throughout the state of California. In 2009, a decision was made in *Palmer/Sixth Street Properties L.P. v. City of Los Angeles* that dealt a blow to inclusionary zoning – for rental properties – in Los Angeles, and set a dangerous precedent for the state. Under the CCWSP, developer Geoff Palmer was required to provide 60 permanently affordable units or pay a total of \$5.7 million in in-lieu fees (at a rate of \$96,182.17 per unit) for his Piero II project. The 60 units represented 17% of the 350 market-rate units proposed for the project – Palmer was required to replace a low-income apartment hotel demolished on the site in 1990, although the site was currently being used as a parking lot.<sup>36</sup> Declining to request density bonuses or other available incentives from the city, Palmer sued.<sup>37</sup>

A state appellate court ruled that the CCWSP violated the state's Costa-Hawkins Act (CHA), which established vacancy decontrol in August 1995. According to the appeal court's ruling, "as applied to Palmer's proposed project, the affordable housing ordinance conflicts with and is preempted by the vacancy decontrol provisions of the Costa-Hawkins Rental Housing Act...which allows residential landlords to set the initial rent levels at the commencement of a tenancy."<sup>38</sup> Thus, CHA gave landlords the right to establish initial rental rates. Forcing Palmer, who refused to build any affordable units, to involuntarily comply with the inclusionary component of the CCWSP "is clearly hostile to the right afforded under the Costa-Hawkins Act." The city claimed that the in-lieu fee option worked around the CHA, but the court disagreed, finding that "because the fee amount is based solely on the number of affordable units that a developer must provide under the Plan, the Plan's affordable housing requirements and in lieu fee option are inextricably intertwined. The objective of section 11.C is not to impose fees, but to impose affordable housing requirements that may be satisfied by paying fees."<sup>39</sup>

The interpretation of the Costa-Hawkins Act through the Palmer decision caused concern in the state, because it could set a precedent for other challenges to IZ ordinances. Fortunately, only rental properties are impacted, not projects that are for-sale or have some sort of government assistance.<sup>40</sup> The CCWSP can still apply the 15% set-aside to for-sale projects. Unfortunately, given the recent tenure shift from ownership units to rental, cities across California will be losing out on inclusionary units that would have otherwise been built. CCWSP's one-for-one replacement requirement is still valid, because it was determined to be a mitigation measure when the specific plan's Environmental Impact Report (EIR) was completed.<sup>41</sup> The mitigation for the demolition of affordable housing was that it had to be replaced for commercial, industrial, and residential uses, and continues to apply to both rental and ownership units built in the neighborhood. Palmer will reportedly not affect inclusionary ordinances that permit in-lieu fees.<sup>42</sup>

It seems that state legislators foresaw potential conflicts between the Costa Hawkins Acts and local inclusionary ordinances, but never resolved or clarified the relationship between the two. At least one scholarly article was written about this issue pre-Palmer, which points out that in 2000, section 3 of California Senate Bill 1106 attempted to exclude inclusionary housing



programs from falling under the CHA – but the bill died in that legislative session.<sup>43</sup> In the same session, language in the original version of Senate Bill 1098 stated that the CHA was not meant to preempt local IZ ordinances; this language was not contained in the final version of the bill, and there is no history of why it was omitted.<sup>44</sup>

### 5.2.2 IZ ordinances in the greater Los Angeles area

Cities adjacent to Los Angeles do have citywide inclusionary ordinances. Perhaps the most successful has been Santa Monica’s Affordable Housing Production Program (AHPP), which began in 1988. A city employee I spoke with stated that the overriding inclusionary mandate is essentially a local proposition.<sup>45</sup> Inclusionary zoning was adopted by the Santa Monica City Council in response to an initiative approved by voters requiring 30% of all new multi-family development to be affordable to low- and moderate-income individuals on an annual basis. Because the community demanded diversity, politicians cannot take away the AHPP.

Developers receive no special benefits for complying with the AHPP, other than being able to build.<sup>46</sup> Santa Monica’s ordinance is very flexible and frequently modified. As Table 5-4 shows, requirements vary by project size and tenure type, becoming more demanding as projects increase in size or developers choose to build affordable units off-site.

**Table 5 - 4: Condominium Projects in Multi-Family Zones**

Project Size	On-site Requirement	Off-site Requirement
<b>2 or 3 units</b>	N/A – developers may pay affordable housing fee	
<b>4-15 units</b>	20%	25% more units than would have been required if on-site
<b>16+ units</b>	25%	25% more units than would have been required if on-site

*Source: City of Santa Monica Affordable Housing Production Program*

For-sale units must be affordable to households at 100% AMI, and rental units must be affordable to low-income households (60% AMI). If rental units are built in a non-residential zone, however, those units may be restricted for moderate-income tenants instead. Developers of apartment buildings in Santa Monica also have a variety of options within the AHPP. On-



site and off-site requirements are identical. If affordable units are restricted for very low-income tenants, there is only a 10% set aside; if the units are for low-income households, the set-aside increases to 20%. Santa Monica's residential market has weathered the housing market crash relatively well, with my interviewees stating that the effect of the recession has not been as dramatic as in other cities.

West Hollywood, another city adjacent to Los Angeles, has had an inclusionary ordinance since 1986. Developers of projects with ten or fewer units can either pay a fee or a combination of construction and payment. As of 2011, the per-square-foot fee varied between \$11.51 for a 2-unit project and \$24.68 for a 10-unit project. Money collected through fee payments is placed in the City's Affordable Housing Trust Fund. Projects with 11+ units must build on-site, though developers may apply for an exception under certain circumstances. Exceptions are to be granted if:<sup>47</sup>

- More units are provided
- The off-site units are comparable in appearance and have the same number of bedrooms as the market-rate units
- The off-site units will be constructed before or concurrently with the market-rate project
- The units are built in an area zoned for medium to high density residential development
- Management and construction occurs with a nonprofit partner
- Low-income units are not overly concentrated in a specific neighborhood

The City of Pasadena established its Inclusionary Housing Ordinance in 2001. It uses a minimum set-aside of 15%, with variation depending on the project's tenure type: for sale projects must set aside 15% of units affordable to low- or moderate-income households, but rental projects must set aside 10% to low-income and 5% to moderate-income households. In-lieu fees and off-site construction is allowed, at the discretion of the City Manager or Assistant City Manager, for projects containing more than 10 units. However, affordable units must be built on-site if the project displaces any existing affordable units.<sup>48</sup> In-lieu fees are placed in the Inclusionary Housing Trust Fund and used for projects building very- and low-income housing.<sup>49</sup>

### 5.3 ON-SITE CONSTRUCTION AND FLEXIBLE ALTERNATIVES

My interviewees frequently agreed that inclusionary zoning must not be overly burdensome for developers because they keep building. Paul Silvern of the economic development-consulting firm HR&A Advisors has studied the economics of IZ quite carefully, and has found that developers are able to make a market responsive return on investment by complying with requirements.<sup>50</sup> Larger market forces are more important than IZ requirements.

Like in Boston, many individuals in southern California are supportive of alternatives to on-site construction. For instance, Mr. Silvern points out that it is very helpful to have options because one size does not fit all in all cases.<sup>51</sup> Blake Lamb of the Los Angeles Department of City Planning supports flexible alternatives from a design perspective – 100% affordable projects can better meet the needs of low-income residents because they tend to contain more supportive services and targeted amenities, such as children’s play yards.<sup>52</sup>

In-lieu fees were part of LA’s plan when a citywide inclusionary ordinance was considered in the 2000s. At an April 14, 2004 meeting, the Planning and Land Use Management (PLUM) and Housing Community and Economic Development (HCED) City Council committees requested the City Attorney, the Housing Department, and the Planning Department to “recommend methodologies for the purpose of calculating in-lieu fees as an alternative compliance option as a dollar amount per square footage.”<sup>53</sup> Another City Council document, from April 21, 2004, instructs “the LAHD to study the proposed in-lieu fee and opt-out provisions, and determine if such provisions will fulfill or detract from the goal of producing both affordable and market-rate housing units on a citywide basis.”<sup>54</sup> This indicates that flexible alternatives were not a foregone conclusion in Los Angeles and would not be included if it was found that they did not fulfill the City’s housing goals. A 2000 report released by the Los Angeles Housing Crisis Task Force estimated that including an in-lieu fee of \$7 per square foot would result in collection of \$14-20 million per year.<sup>55</sup>

The structure of the in-lieu fee was questioned in a report from August 2004 by the Housing Department, Planning Department, and Redevelopment Agency,. Essentially, the proposed fee was to include “an extra 10% above the “economic equivalent of the cost of construction.””<sup>56</sup> The report indicated confusion as to whether this 10% was to pay for administrative costs or to punish developers who opt out of building affordable units. This illustrates that in-lieu fees have been and can be used to disincentive off-site construction or buying out. This is a more punitive manner of flexibility, when cities offer a fee option but prefer developers to construct affordable units on-site.

LA's IZ ordinance proposed allowing off-site construction, but only under certain conditions: developers had to provide 110% of the on-site requirement, and the units had to be located in the same Community Plan area as the market-rate development.<sup>57</sup> In-lieu fee payments were to be deposited into the City's Affordable Housing Trust Fund (AHTF), which already had a mechanism for awarding money to affordable housing developments. The City acknowledged that this option could lead to affordable housing being disproportionately located in lower-income parts of the city, because the state and federal funding sources leveraged by the AHTF are structured to award the lowest cost housing. This encourages developers to locate affordable housing developments in areas with low land costs, because land is one of the most important factors in development. Lower income areas tend to have lower land costs.<sup>58</sup>

### **5.3.1 Central City West Specific Plan**

Los Angeles allows for Specific Plan Exceptions, which are essentially zoning variances. Thus, a handful of projects in the Central City West neighborhood were granted permission to fulfill their affordable housing obligation by building off-site.<sup>59</sup> It is not clear if any projects have tried and been denied the ability to construct affordable units off-site. Overall, five projects have been granted approval, yielding 191 affordable units built off-site.<sup>60</sup> One project paid over \$800,000 in in-lieu fees, and a 20,000 square foot commercial project was required to pay an unknown amount in linkage fees.

The in-lieu fees specified in the CCWSP are supposed to be updated every year according to the annual percentage change in the Engineering News Record Construction Cost Index, which is published by McGraw Hill. Between January 1, 2012 and January 1, 2013, the in-lieu fee for very low-income dwelling units is \$146,354 and the fee for low-income dwelling units is \$114,788.<sup>61</sup> According to Blake Lamb of the Los Angeles Department of City Planning, fee updates are published in the *Daily Journal* newspaper.<sup>62</sup>

### **5.3.2 Santa Monica**

Santa Monica's AHPP places an increased burden on condominium developers who build units off-site: an additional 25% set aside beyond the on-site requirement. For example, projects between 4 and 15 units have an on-site requirement of 20%; a developer building the affordable units off-site would have to provide this 20% base and an additional 5% (1/4 of 20%)



for a total obligation of 25%. There is no difference between the on-site and off-site requirements for apartment buildings. Income-restricted units in condominium developments may be rented or sold.

According to Paul Silvern of HR&A Advisors, which has acted as a consultant for the AHPP, the City has become somewhat more permissive in allowing off-site construction over time.<sup>63</sup> Santa Monica offers several unique flexible alternatives. For instance, developers are allowed to satisfy the AHPP obligation by dedicating land equivalent to the cost of their affordable housing obligation. If a developer has multiple projects, they may combine all of their AHPP obligations and satisfy them with one off-site project. Multiple developers are also permitted to partner and consolidate their requirements.

To develop units off-site, a developer must identify and have control over a site suitable for residential housing that is within ¼ mile of the market-rate units. The Planning Commission is able to approve projects that vary from these stipulations if they still meet the City's affordable housing goals. A municipal employee that I spoke with argued that at eight square miles, Santa Monica is so compact that in many respects social integration is achieved anywhere in the city limits.<sup>64</sup> There is some flexibility with the quarter-mile radius rule if the developer can demonstrate it is a problem, either because they cannot find a large enough or appropriately zoned piece of land, going beyond the radius would result in a greater dispersal of affordable housing, or the developer could provide more affordable units or units at a deeper level of affordability.<sup>65</sup> In these instances, developers may be permitted to build between ¼ and 1 mile from the market-rate project.

Santa Monica provides an in-lieu fee option, known as the Affordable Housing Fee. This amount differs, however, from another calculation the city makes, which has been automatically adjusted since July 1, 2007. The Affordable Housing Unit Development Cost, updated annually, is based on a weighted average between the change in construction costs and land value. The methodology for this adjustment was proposed by HR&A Advisors, and approved by the City Council in June 2006. To measure the construction cost inflation, Engineering News Record's Construction Cost Index for the Los Angeles metro area is used. To measure the inflation in land costs, the tool uses a weighted average annual change in medium condominium sales prices by zip code. However, this amount is only used when a

developer of on- or off-site affordable units is faced with building a fractional unit less than 0.75. In July 2011, the fee was increased to \$287,003.

The Affordable Housing Fee amounts adopted as of June 2011 are \$27.35 per square foot for apartments and \$31.94 per square foot for condominium projects.<sup>66</sup> However, developers of different types of projects pay different amounts of this fee. Multi-family projects in land zoned for Multi-family Residential use pay the full cost, but if the project is on a vacant parcel, developers are only required to pay 75% of the fee cost. Meanwhile, multi-family projects built on land zoned for Industrial or Commercial uses pay only 50% of the fee.<sup>67</sup> The anonymous municipal employee I spoke with would like to see fee increased because the amount is not equivalent to what is needed to build the units by non-profits.<sup>68</sup>

The money collected through fee payments is placed in an account, separate from the City's General Fund, and is used to:

1. Develop very low- and low-income housing
2. Finance administrative costs related to the above
3. Monitor and evaluate the AHPP

If the money has not been used within five years, it is refunded to the developer.<sup>69</sup>

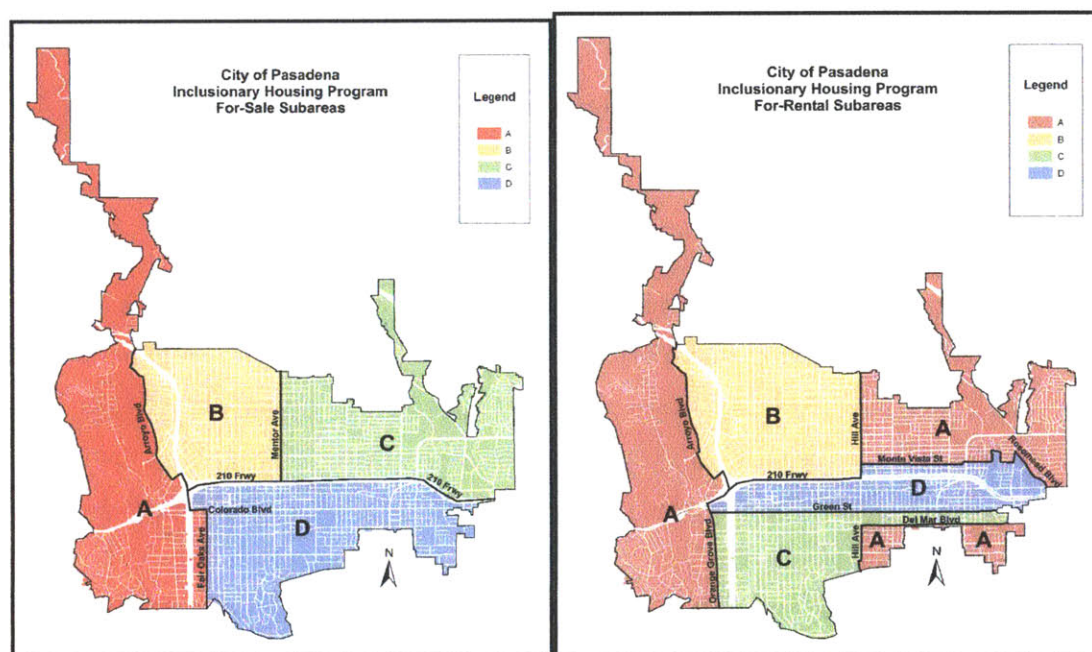
Unfortunately, Santa Monica's flexibility has not always worked in its favor. Developer JSM Construction purchased two lots in order to satisfy affordability requirements under the AHPP by constructing two 26-unit affordable projects. However, in April 2010, the lots went into foreclosure. Before this occurrence, the City allowed developers to obtain permits for market-rate projects as long as some form of security equivalent to the amount of in-lieu fees that would otherwise be provided. Unfortunately, the fee amount is much less than the cost of construction; JSM Construction put up a \$1.1 million guarantee that the affordable units would be built, which is only 2% of the total cost to construct all 52 units.<sup>70</sup> This reveals the total cost would be \$55 million, and the in-lieu fees, which are on a square-footage basis, are equivalent to \$42,308 per affordable unit. This is less than the fees used across town in LA's Central City West neighborhood, and nearly the amount Boston charged when it first set in-lieu fees; six years later, Boston's fees are \$200,000 per unit. This story shows the importance of setting in-lieu fees at a meaningful level.

The AHPP was not affected by the *Palmer* decision, because Santa Monica already offered multiple ways for developers to fulfill their affordable housing obligation. According to Mr. Silvern, in 1997 HR&A Advisors completed one of the very first nexus studies to justify demand of the fee, which has allowed the city to continue applying the AHPP obligations to rental units.<sup>71</sup> Other cities with IZ and fees that are not based on nexus studies do not have a legal leg to stand on in the face of *Palmer*. As explored in chapter 6, other cities across California are now trying to complete nexus studies in an attempt to get around the decision.

### 5.3.3 Pasadena

Like Santa Monica, Pasadena sets in-lieu fees on a square-footage basis, with variation by project size and geographic area. For purposes of the Inclusionary Housing Program, the city has been subdivided into four geographic subareas – though the areas are different for rental and for-sale projects. It is not clear why these changes have been made; see Figure 5-4 below for a comparison:

Figure 5 - 4: City of Pasadena Inclusionary Housing Program Subareas - For-Sale (left) and For-Rental (right)



Source: Housing Production (City of Pasadena Housing Department)<sup>72</sup>

Figure 5-5 shows how the in-lieu fees vary by project size, tenure type, and geographic area, and how they have increased between FY2011 and FY2012. The City's Schedule of Taxes,



Fees, and Charges notes that “The rental in-lieu fees for Sub-area A shall be determined (TBD) in accordance with the External Finance Consultant (Contracted by the Housing Department) at the time of application for payment of In-lieu fees for a rental housing project.”<sup>73</sup>

Figure 5 - 5: In-lieu Fees (per square foot)

<u>MUNICIPAL CODE SECTION</u>	<u>ADOPTED FY2011 RATE</u>	<u>ADOPTED FY2012 RATE</u>
17.42.050 IN LIEU FEE (per square foot)		
10-49 Rental Units		
Sub-area A	TBD	TBD (5)
Sub-area B	1.07	1.09
Sub-area C	23.48	24.02
Sub-area D	21.34	21.83
50 + Rental Units	-	0.00
Sub-area A	TBD	TBD (5)
Sub-area B	1.07	1.09
Sub-area C	32.01	32.75
Sub-area D	29.88	30.57
10-49 For Sale Units		
Sub-area A	40.55	41.48
Sub-area B	14.94	15.28
Sub-area C	24.54	25.11
Sub-area D	19.21	19.65
50 + For Sale Units		
Sub-area A	56.56	57.86
Sub-area B	20.27	20.74
Sub-area C	34.15	34.93
Sub-area D	26.68	27.29

Source: City of Pasadena Schedule of Taxes, Fees, and Charges<sup>74</sup>

## 5.4 PRODUCTION ANALYSIS

There are no citywide statistics to discuss, because Los Angeles does not have an inclusionary ordinance. LA is the only major city in the U.S. without a citywide IZ ordinance; in addition to Boston and San Francisco, other programs include New York City’s Inclusionary Housing Program, Chicago’s Affordable Rental Ordinance, Denver’s Inclusionary Housing Ordinance, San Diego’s Inclusionary Affordable Housing Ordinance, and Sacramento’s Low-Income Inclusionary Zoning Ordinance. As the second most-populous city in the country, it is unfortunate that LA has failed to establish mandatory IZ.

How would a citywide IZ ordinance have benefitted the city? 190,000 units were built between 1981 and 2001; if an ordinance with a 15% set-aside had existed, 28,500 affordable units could have been created.<sup>75</sup> The City set a goal of producing an average of 8,000 units every year between 1998 and 2005; as of April 2004, only two-thirds of that goal had been met.<sup>76</sup> A report from August 2004 states

that the City's Housing Element set a goal of 5,674 affordable units per year between 1998 and 2005.<sup>77</sup> More information can be found in Table 5-5 below:

**Table 5 - 5: Los Angeles Housing Element Goals and Permits Issued**

Calendar Year	Production Goal	Total Units	Shortfall
1999	8,611	3,609	5,002
2000	8,611	4,668	3,943
2001	8,611	6,999	1,612
2002	8,612	8,153	459
2003	8,612	7,595	1,017
2004 – 1 <sup>st</sup> half of year	4,305	5,585	(1,280)
2004 – 2 <sup>nd</sup> half of year	4,306	N/A	N/A
2005	8,612	N/A	N/A
<b>Total as of 6/30/04</b>	<b>60,280</b>	<b>36,609</b>	<b>10,753</b>

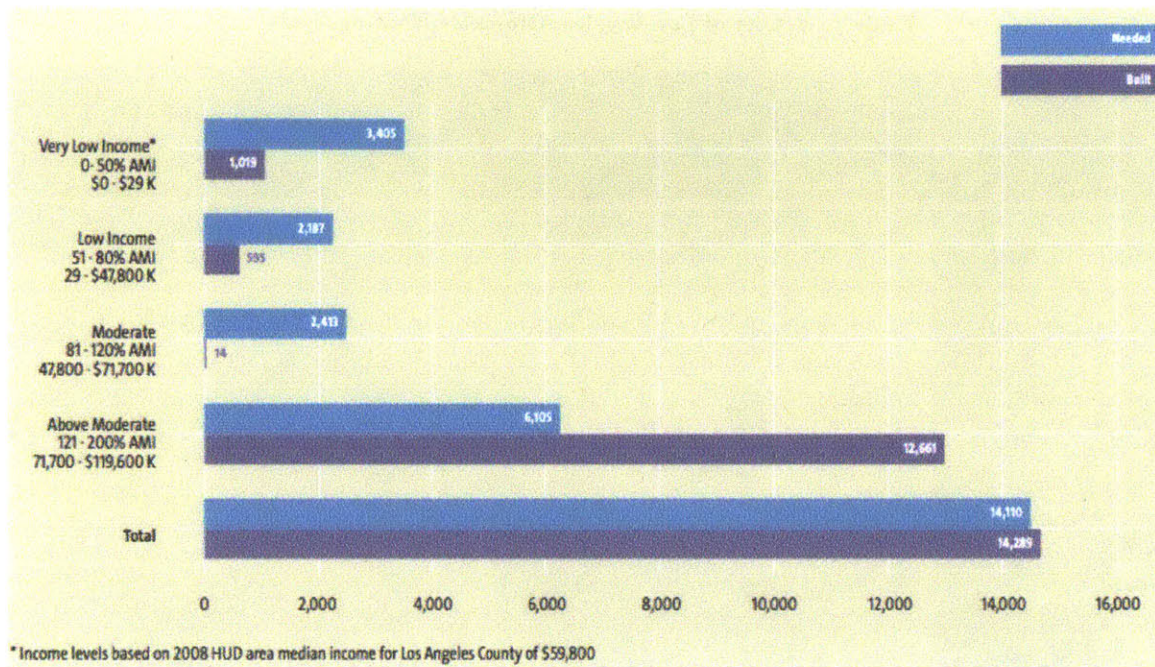
Source: Los Angeles Inclusionary Zoning – Attachment D<sup>78</sup>

Had an inclusionary ordinance with a 20% set-aside existed between 1999 and mid-2004, the City may have faced less of a shortfall. 26,056 of the units built in that time were in multifamily buildings; an IZ ordinance could have resulted in 5,200 affordable units. However, a report notes “many of these units are already affordable because the multifamily permit number includes both market rate and affordable housing developments.”<sup>79</sup>

Figure 5-6 below shows that overall, more units (14,289) were built in Los Angeles than the city's projected need of 14,110. However, an overwhelming majority (88.6%) of these have been for households earning annual incomes above \$71,700, while only 43.3% of the total projected needed units were meant to be for such affluent households. Los Angeles has failed to produce enough housing for its lower-income populations. For very low-income and low-income households, nearly one-third of the projected unit needs were met. However, for moderate-income households, only 0.58% (14 units) of the projected 2,413 needed units were built. This makes a compelling case in favor of creating an IZ ordinance in Los Angeles – perhaps with more limited flexibility – specifically because IZ tends to target moderate-income households. This data is further summarized in Table 5-6.



Figure 5 - 6: Los Angeles Housing 2007 - # Units versus Need



Source: Los Angeles: Housing That Works, 2008-2013<sup>80</sup>

Table 5 - 6: Los Angeles Housing 2007 - # Units versus Need

Income Group	Needed (#)	Needed (%)	Built (#)	Needed (%)	Percentage of Need Met
Very Low Income	3,405	24.1%	1,019	7.1%	29.93%
Low Income	2,187	15.5%	595	4.2%	27.21%
Moderate Income	2,413	17.1%	14	0.1%	0.58%
Above Moderate	6,105	43.3%	12,661	88.6%	207.39%
Total	14,110	100%	14,289	100.0%	101.27%

Source: Los Angeles: Housing That Works, 2008-2013<sup>81</sup>

Los Angeles's affordable housing production and preservation goals from 2008 to 2013 are outlined in Table 5-7 below. The City intended for its Mixed Income ordinance to be very productive – over one-third of the goal was to be met in that manner. Note that 5.7% of the very low-income target was to be met in this way at all; traditionally, inclusionary ordinances do not create units at such a deep level of affordability. However, in-lieu fees could have served as gap financing for these income levels.



**Table 5 - 7: City of Los Angeles Affordable Housing Goals**

Income Level	% of AMI (4-Person Household)	5-Year Target Produce & Preserve	Units Produced through Mixed Income requirement, Land Use Incentives, & Innovative Design
<b>Chronically Homeless</b>	< 50%	2,200	0 (0%)
<b>Very Low Income</b> 0 - \$29,000	0-50%	8,800	500 (5.7%)
<b>Low Income</b> \$29,000 - \$47,800	51-80%	3,800	3,000 (78.9%)
<b>Moderate Income</b> \$47,800 - \$71,700	81-120%	2,600	2,000 (76.9%)
<b>Above Moderate</b> \$71,700 - \$119,600	121 - 200% AMI	2,600	2,000 (76.9%)
<b>City Goals</b>	---	20,000	7,500 (37.5%)

Source: Los Angeles: Housing That Works, 2008-2013<sup>82</sup>

#### 5.4.1 Central City West Specific Plan

The CCWSP's inclusionary requirement has been quite productive. Using information from projects approved in the area between 2001 and 2011, a total of 25 projects were obligated to provide affordable housing. Five of these built 191 affordable units off-site, while the other 20 projects contain over 660 on-site affordable units. In this time, a total of 6,612 residential units were approved for the Central City West neighborhood. One-third of units approved in the neighborhood were affordable during this time: 10% were inclusionary on-site, 3% inclusionary off-site, and 17% were built in eleven 100% affordable projects. Twenty-one projects of other uses, and thus no affordability requirements, were excluded from this analysis. Annual information is displayed in Table 5-8.



**Table 5 - 8: Central City West Production Statistics**

Year	Total # of Projects	# Affordable Units			# Market-Rate Units	\$ collected in in-lieu fees	Total # of Units
		On-site	Off-site	In 100% Affordable Projects			
2001	3	0	0	338	0	\$0	338
2002	3	45	0	21	258	\$0	324
2003	1	30	0	0	171	\$0	201
2004	4	49	0	289	278	\$0	616
2005	4	124	36	0	905	\$0	1065
2006	8	126	80	70	1231	\$824,418.63	1507
2007	4	104	0	0	557	\$0	661
2008	4	13	0	75	76	\$0	164
2009	2	0	75	214	139	\$0	428
2010	3	56	0	123	384	\$0	563
2011	2	112	0	0	633	\$0	745
<b>Total</b>	<b>38</b>	<b>660</b>	<b>191</b>	<b>1130</b>	<b>4631</b>	<b>\$824,418.63</b>	<b>6612</b>

Source: Central City West Specific Plan – Summary of Affordable Units<sup>83</sup>

#### 5.4.2 Santa Monica's Affordable Housing Production Program

Below, Table 5-9 chronicles changes made to Santa Monica's calculation of the average cost to build one unit of affordable housing since 2007. The fee has increased every year, except between 2009 and 2010. Note that this is *not* the AHPP's in-lieu fee – rather, this cost applies when “the calculation of the number of affordable housing units required results in a fractional unit, these developers are eligible to pay a fee equal to the cost of producing that fractional unit if that fraction is less than 0.75.”<sup>84</sup>

**Table 5 - 9: Change in Cost of Developing 1 Unit of Affordable Housing**

Date	Affordable Housing Unit Development Cost	Change
2007	\$265,632	--
2008	\$277,585	+\$11,953
2009	\$284,802	+\$7,217
2010	\$281,100	-\$3,702
2011	\$287,003	+\$5,903

Why does Santa Monica acknowledge – and annually update – the cost to develop an affordable housing unit, but charge developers who choose to pay in-lieu fees a different amount? In 2003, the Affordable Housing Fee (AHF) amounts were \$6.14 per square foot for apartments and \$11.01 per square foot for condominiums. The AHF amounts adopted as of June 2011 are \$27.35 per square foot for apartments and \$31.94 per square foot for condominium projects.<sup>85</sup>

Each year, a public report is submitted to the City Council containing most of the information found in Tables 5-10 and 5-11 on the next page. Each report also includes attachments with detailed information about projects completed, projects under construction, and projects approved in the past year. Table 5-10 shows trends between 1998 and 2010 in how developers have fulfilled the affordable housing obligations. Overall, 69% of eligible projects have paid in-lieu fees, with 24% building affordable units on-site and 4% building the units off-site. Santa Monica has done a good job reporting the results of the AHPP. Note that in Table 5-10, the number of projects paying fees (third column) and the number of projects paying fees in-lieu of building affordable units (fifth column) do not match up because of how Santa Monica produces its housing reports. The third column is referring to the fees *actually* collected within the fiscal year, while the fifth column refers to the projects *approved* to pay fees during that time.

Table 5-11 shows details about the total units approved between Fiscal Year 98/99 and Fiscal Year 09/10. As seen in the second column, the City reported the in-lieu fees owed for individual projects through Fiscal Year 2004/2005; since reporting first began, Santa Monica approved payments totaling \$8,662,944. The project approval sheets were also used to add up the total number of affordable units built on-site: 839. Thus, of the 1,372 affordable units approved between FY 1998-1999 and FY 2010-2011, 61% were built on-site in mixed-income housing developments.



**Table 5 - 10: How Developers Fulfill Santa Monica's AHPP**

Fiscal Year	Fees collected	# of projects paying fees	# of MF projects approved	# projects paying fees in-lieu of building affordable units	% paying fee	# projects building affordable units on-site	% on-site	# projects building affordable units off-site	% off-site
98/99			24	23	96%	1	4%	0	0%
99/00			23	19	83%	0	0%	0	0%
00/01	\$532,572	11	9	7	78%	0	0%	0	0%
01/02	\$637,743	13	12	10	83%	0	0%	0	0%
02/03	\$720,109	11	18	14	78%	3	17%	0	0%
03/04	\$324,688	7	26	16	62%	7	27%	3	12%
04/05	\$138,813		22	13	59%	7	32%	2	9%
05/06	\$619,126		35	25	71%	7	20%	4	11%
06/07	\$1,177,512		32	21	66%	11	34%	0	0%
07/08	\$1,365,613		14	7	50%	7	50%	0	0%
08/09	\$1,073,398		10	3	30%	6	60%	1	10%
09/10	\$1,226,919	12	13	7	54%	9	69%	0	0%
<b>TOTAL</b>	<b>\$7,816,493</b>	<b>54</b>	<b>238</b>	<b>165</b>	<b>69%</b>	<b>58</b>	<b>24%</b>	<b>10</b>	<b>4%</b>

Source: City of Santa Monica Annual Report to the City Council Concerning the AHPP

**Table 5 - 11: Santa Monica Project Approvals**

Fiscal Year	In-lieu fees	Total Units	On-site Affordable Units	Off-site Affordable Units	Nonprofit on-site	Total Affordable	% Affordable	Total Market-rate
98/99	\$1,377,554	220	1	0	66	67	30.5%	153
99/00	\$1,527,182	391	10	5	44	59	15.1%	332
00/01	\$910,452	262	52	0	0	52	19.8%	210
01/02	\$1,247,675	359	27	0	0	27	7.5%	332
02/03	\$1,525,740	266	8	0	44	52	19.5%	214
03/04	\$1,060,127	376	19	0	90	109	29.0%	267
04/05	\$1,014,214	332	30	10	47	87	26.2%	245
05/06	Unknown	742	158	23	102	283	38.1%	459
06/07	Unknown	155	11	0	0	11	7.1%	144
07/08	Unknown	485	164	0	92	256	52.8%	229
08/09	Unknown	362	200	10	0	210	58.0%	152
09/10	Unknown	231	159	0	0	159	68.8%	72
<b>TOTAL</b>	<b>\$8,662,944</b>	<b>4181</b>	<b>839</b>	<b>48</b>	<b>485</b>	<b>1372</b>	<b>32.8%</b>	<b>2809</b>



Below, Table 5-12 shows that overall, 37% of the multifamily units built in Santa Monica from 1994 to 2010 were affordable.<sup>86</sup> An anonymous employee of the City of Santa Monica stated that this 37% is entirely attributable to the City's AHPP.<sup>87</sup>

**Table 5 - 12: Cumulative Proposition R Achievements: Affordable New Multifamily Units Completed Annually**

Reporting Period	Total Units	Affordable Units	% Affordable
FY 94/95	11	2	18%
FY 96/97	108	86	80%
FY 97/98	111	68	61%
FY 98/99	172	146	85%
FY 99/00	177	123	69%
FY 00/01	267	64	24%
FY 01/02	702	211	30%
FY 02/03	212	1	0%
FY 03/04	235	40	17%
FY 04/05	55	26	47%
FY 05/06	39	2	5%
FY 06/07	272	86	32%
FY 07/08	264	92	32%
FY 08/09	537	248	46%
FY 09/10	189	20	11%
<b>TOTAL:</b>	<b>3,351</b>	<b>1,215</b>	<b>37%</b>

<sup>1</sup> "2010 U.S. Census", n.d., <http://www.census.gov/>.

<sup>2</sup> Ibid.

<sup>3</sup> "2006-2010 American Community Survey 5-Year Estimates," *American Fact Finder*, n.d., [www.census.gov](http://www.census.gov).

<sup>4</sup> "U.S. Census," *Gaz\_places\_national.txt*, n.d., [http://www.census.gov/geo/www/gazetteer/files/Gaz\\_places\\_national.txt](http://www.census.gov/geo/www/gazetteer/files/Gaz_places_national.txt).

<sup>5</sup> "2006-2010 American Community Survey 5-Year Estimates."

<sup>6</sup> "Zillow," *Local Info*, n.d., <http://www.zillow.com/local-info/>.

<sup>7</sup> "2006-2010 American Community Survey 5-Year Estimates."

<sup>8</sup> “Paycheck to Paycheck,” *Center for Housing Policy*, n.d., <http://www.nhc.org/chp/p2p/>.

<sup>9</sup> *In Short Supply - Recommendations of the Los Angeles Housing Crisis Task Force.pdf* (Los Angeles, CA, May 2000), 1, <http://lahd.lacity.org/lahdinternet/Portals/0/Policy/shrtsup2k.pdf>.

<sup>10</sup> “General Population by City in Los Angeles County, 1960 - 2000 (U.S. Census),” *Los Angeles Almanac*, n.d., <http://www.laalmanac.com/population/po27.htm>.

<sup>11</sup> *In Short Supply - Recommendations of the Los Angeles Housing Crisis Task Force.pdf*, 11.

<sup>12</sup> *Los Angeles: Housing That Works*, 2008-2013 (Los Angeles, CA: City of LA, n.d.), 7, [http://mayor.lacity.org/stellent/groups/electedofficials/@myr\\_ch\\_contributor/documents/contributor\\_web\\_content/lacity\\_004903.pdf](http://mayor.lacity.org/stellent/groups/electedofficials/@myr_ch_contributor/documents/contributor_web_content/lacity_004903.pdf).

<sup>13</sup> “State of California Law SB 1818 - Density Bonus” (Southern Nevada Regional Planning Coalition, n.d.), <http://www.snrpc.org/WorkforceHousing/Development/StateofCaliforniaDensityBonusLaw.pdf>.

<sup>14</sup> Mercedes M. Marquez, Con Howe, and Robert R. Ovrom, *Inclusionary Zoning Report Back Memo* (Los Angeles, CA: City of LA, 2004), 7, <http://lahd.lacity.org/lahdinternet/Portals/0/Policy/izcvltr.pdf>.

<sup>15</sup> *Ibid.*, 2.

<sup>16</sup> Blake Lamb, phone interview, January 20, 2012.

<sup>17</sup> *Inclusionary Housing Discussion*.

<sup>18</sup> *Report Back to Committees on Proposed Inclusionary Zoning Ordinance Matrix* (Council File 04-0637), 12.

<sup>19</sup> Greg Vilkin, phone interview, February 24, 2012.

<sup>20</sup> Susan Shaw, ed., “CCA Focus 2004 Q2” (Central City Association of Los Angeles, 2004), [http://ccala.org/downloads/1\\_03\\_newsletter/Q2\\_2004\\_CCA\\_Focus.pdf](http://ccala.org/downloads/1_03_newsletter/Q2_2004_CCA_Focus.pdf).

<sup>21</sup> Jannelle E. Grigsby, ed., “CCA Focus 2004 Q3” (Central City Association of Los Angeles, 2004), [http://ccala.org/downloads/1\\_03\\_newsletter/Q3\\_2004\\_CCA\\_Focus.pdf](http://ccala.org/downloads/1_03_newsletter/Q3_2004_CCA_Focus.pdf).

<sup>22</sup> *Housing For All: Fair Share Program* (Los Angeles, CA: Building Industry Association - Los Angeles/Ventura Chapter, 2004), [http://www.oaklandnet.com/BlueRibbonCommission/PDFs/BlueRibbon28-LA\\_HsgForAll.pdf](http://www.oaklandnet.com/BlueRibbonCommission/PDFs/BlueRibbon28-LA_HsgForAll.pdf).

<sup>23</sup> Holly Schroeder, phone interview, February 23, 2012.

<sup>24</sup> Vilkin, interview.

<sup>25</sup> Isela Gracian, phone interview, March 9, 2012.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> Lauren Klausen, ed., “CCA Focus 2007 Q4” (Central City Association of Los Angeles, 2007), [http://ccala.org/downloads/1\\_03\\_newsletter/Q4\\_2007\\_CCA\\_Focus.pdf](http://ccala.org/downloads/1_03_newsletter/Q4_2007_CCA_Focus.pdf).

<sup>29</sup> Naomi Guth, phone interview, March 8, 2012; Gracian, interview.

<sup>30</sup> Schroeder, interview.

<sup>31</sup> Vilkin, interview.



<sup>32</sup> Guth, interview.

<sup>33</sup> Gracian, interview.

<sup>34</sup> Lamb, interview.

<sup>35</sup> Guth, interview.

<sup>36</sup> Paul Shigley, "Court Rules L.A. Inclusionary Housing Mandate Violates State Law," *California Planning and Development Report*, August 20, 2009, <http://www.cp-dr.com/node/2401>.

<sup>37</sup> Barbara Kautz, *Home Sweet Home? Legal Challenges to Inclusionary Ordinances and Housing Elements* (San Jose, California: League of California Cities, 2009), 7.

<sup>38</sup> *Palmer/Sixth Street Properties V. City of Los Angeles* (Court of Appeals of California, Second District, Division 4 2009).

<sup>39</sup> Ibid.

<sup>40</sup> Shigley, "Court Rules L.A. Inclusionary Housing Mandate Violates State Law."

<sup>41</sup> Lamb, interview.

<sup>42</sup> Shigley, "Court Rules L.A. Inclusionary Housing Mandate Violates State Law."

<sup>43</sup> Nadia I. El Mallakh, "Does the Costa-Hawkins Act Prohibit Local Inclusionary Zoning Programs?," *California Law Review* 89, no. 6 (December 2001): 1867.

<sup>44</sup> Ibid., 1868.

<sup>45</sup> Anonymous City of Santa Monica employee, phone interview, January 4, 2012.

<sup>46</sup> Paul Silvern, phone interview, January 13, 2012.

<sup>47</sup> "West Hollywood Municipal Code Chapter 19.22 Affordable Housing Requirements and Incentives" (City of West Hollywood, n.d.).

<sup>48</sup> "Chapter 17.42 - Inclusionary Housing Requirements" (City of Pasadena Zoning Code, n.d.).

<sup>49</sup> "2010-2011 Annual Action Plan" (City of Pasadena, n.d.), 3 (Section 6).

<sup>50</sup> Silvern, interview.

<sup>51</sup> Ibid.

<sup>52</sup> Lamb, interview.

<sup>53</sup> *Planning and Land Use Management and Housing, Community and Economic Development Committees, Joint Special Meeting* (Los Angeles, CA: Los Angeles City Council, 2004), <http://lahd.lacity.org/lahdinternet/Portals/0/Policy/iz041404.pdf>.

<sup>54</sup> Barbara Greaves, *Proposed Inclusionary Zoning Ordinance* (Los Angeles, CA: Los Angeles City Council Planning and Land Use Management Committee, 2004), <http://lahd.lacity.org/lahdinternet/Portals/0/Policy/izexh1.pdf>.

<sup>55</sup> *In Short Supply - Recommendations of the Los Angeles Housing Crisis Task Force.pdf*, 31.

<sup>56</sup> *Report Back to Committees on Proposed Inclusionary Zoning Ordinance Matrix* (Council File 04-0637).

<sup>57</sup> Ibid., 13.

<sup>58</sup> Ibid.

<sup>59</sup> Lamb, interview.

<sup>60</sup> “Central City West Specific Plan Summary of Affordable Units” (Los Angeles Department of City Planning, December 2010).

<sup>61</sup> “Notice of Fee Revision, Central City West Specific Plan 2012” (City of Los Angeles, n.d.).

<sup>62</sup> Lamb, interview.

<sup>63</sup> Silvern, interview.

<sup>64</sup> City of Santa Monica employee, interview.

<sup>65</sup> Silvern, interview.

<sup>66</sup> “Fee - Affordable Housing,” *Santa Monica Housing and Economic Development*, n.d., [http://www.smgov.net/Departments/HED/Housing\\_and\\_Redevelopment/Housing/Fee\\_-\\_Affordable\\_Housing/Fee\\_-\\_Affordable\\_Housing.aspx](http://www.smgov.net/Departments/HED/Housing_and_Redevelopment/Housing/Fee_-_Affordable_Housing/Fee_-_Affordable_Housing.aspx).

<sup>67</sup> “Municipal Code Chapter 9.56 Affordable Housing Production Program” (City of Santa Monica, n.d.).

<sup>68</sup> City of Santa Monica employee, interview.

<sup>69</sup> “Municipal Code Chapter 9.56 Affordable Housing Production Program.”

<sup>70</sup> Jodi Summers, *Loopholes in Santa Monica's Inclusionary Multiunit Housing Construction Mandate*, 2011, <http://www.socalmultiunitrealestateblog.com/?p=999>.

<sup>71</sup> Silvern, interview.

<sup>72</sup> “Inclusionary Housing Sub-Areas Map: For-Sale Projects” (City of Pasadena, n.d.), <http://www.ci.pasadena.ca.us/WorkArea/DownloadAsset.aspx?id=6442453950>; “Inclusionary Housing Sub-Areas Map: Rental Projects” (City of Pasadena, n.d.), <http://www.ci.pasadena.ca.us/WorkArea/DownloadAsset.aspx?id=6442453946>.

<sup>73</sup> “Schedule of Taxes, Fees, and Charges” (City of Pasadena, 2012), 11, <http://www.ci.pasadena.ca.us/WorkArea/DownloadAsset.aspx?id=6442455963>, [http://www.ci.pasadena.ca.us/Finance/Fees\\_and\\_Tax\\_Schedules/](http://www.ci.pasadena.ca.us/Finance/Fees_and_Tax_Schedules/).

<sup>74</sup> “Schedule of Taxes, Fees, and Charges.”

<sup>75</sup> *Inclusionary Zoning Motion* (Los Angeles, CA: Los Angeles City Council, 2004), <http://lahd.lacity.org/lahdinternet/Portals/0/Policy/IZmotion.pdf>.

<sup>76</sup> Ibid.

<sup>77</sup> *Report Back to Committees on Proposed Inclusionary Zoning Ordinance Matrix* (Council File 04-0637), 11.

<sup>78</sup> *Attachment D: Housing Element Goals and Permits Issued, LA Inclusionary Zoning* (Los Angeles, CA: City of LA, 2004), <http://lahd.lacity.org/lahdinternet/Portals/0/Policy/izattD.pdf>.

<sup>79</sup> Ibid.

<sup>80</sup> *Los Angeles: Housing That Works*, 2008-2013, 5.

<sup>81</sup> Ibid.



<sup>82</sup> *Ibid.*, 15.

<sup>83</sup> “Central City West Specific Plan Summary of Affordable Units.”

<sup>84</sup> “Resolution Automatically Adjusting the Affordable Housing Unit Development Cost Pursuant to Municipal Code Section 9.56.070(c)” (City of Santa Monica, September 8, 2009).

<sup>85</sup> “Fee - Affordable Housing.”

<sup>86</sup> Andy Agle, “FY 09/10 Annual Report Concerning the Affordable Housing Production Program” (City of Santa Monica, July 14, 2011),

[http://www.smgov.net/uploadedFiles/Departments/HED/Housing\\_and\\_Redevelopment/Affordable\\_Housing/Reports/Proposition\\_R\\_Annual\\_Report\\_FY09-10\\_Info\\_Item\\_071211\\_final.pdf](http://www.smgov.net/uploadedFiles/Departments/HED/Housing_and_Redevelopment/Affordable_Housing/Reports/Proposition_R_Annual_Report_FY09-10_Info_Item_071211_final.pdf).

<sup>87</sup> City of Santa Monica employee, interview.

## 06. CASE #3 - SAN FRANCISCO

### 6.1 DATA & DEMOGRAPHICS

As of 2010, the City of San Francisco has a total population of 805,235. Of these, 48.5% residents are white, 33.3% are Asian, 6.1% are African-American, and 6.6% identify as 'other.' 15.1% of all respondents, regardless of race, identified as Hispanic or Latino ethnically.<sup>1</sup> Inhabitants are spread out over 46.8 mi<sup>2</sup>, resulting in a population density of approximately 17,000 people per square mile.

San Francisco has one of the most expensive real estate markets in the U.S., due both to its fixed land supply and the insatiable demand for housing in the city. Although the foreclosure crisis has dampened the concern for affordable housing across the country, cities such as San Francisco and nearby Palo Alto are facing an increasing affordability problem. Rising housing costs in these parts of the Bay Area is largely fueled by economic growth in the technology sector, where the number of jobs increased by 20% (from 37,000 to 44,000) in the last year alone.<sup>2</sup> Between March 2009 and March 2010, the San Francisco Association of Realtors estimated that the median sales price increased by 19.4%, to \$791,000.<sup>3</sup> Similarly, Reis estimates that in 2011, rents in the city increased by 5%.<sup>4</sup>

According to the Zillow Home Value and Rent Indices, the median home is worth \$654,100 and median monthly rent is \$2,963.<sup>5</sup> The city is also relatively wealthy, and at \$71,304, has the highest median household income of all the cities examined within this paper.<sup>6</sup> This is 137% of the median income in the United States, which was \$51,914 as of 2010.<sup>7</sup> As seen in Table 6-1, the city's population is increasingly polarized by income: more than half of residents are either upper-income (over 150% AMI) or very low-income (less than 50% AMI). The middle three income categories make up only 44% of the city's population.

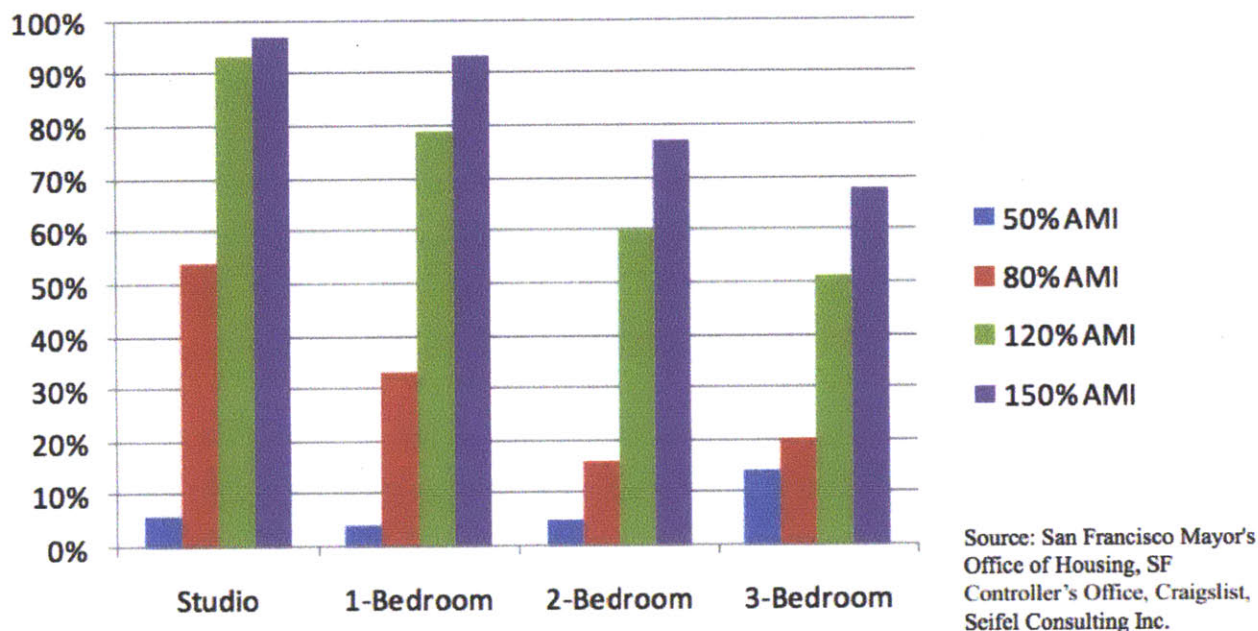
**Table 6 - 1: Resident Income Breakdown**

Income Category	% of Area Median Income	Share of residents
<b>Very Low</b>	< 50%	27%
<b>Low</b>	50 – 80%	16%
<b>Moderate</b>	80 – 120%	18%
<b>Above Moderate</b>	120 – 150%	10%
<b>Upper</b>	> 150%	29%

Source: *Housing For San Francisco Residents*<sup>8</sup>; 2005-2009 American Community Survey

A household earning the median income in San Francisco could afford a monthly housing payment up to \$1,782. Figure 6-1 displays findings from a study of rental postings on Craigslist, a popular online tool for finding housing, shows the housing cost burdens renters face, particularly those at 80% and 50% AMI. Although 66% of the city's deed-restricted affordable housing units are reserved for very low-income residents, and 25% is for households with incomes between 50 and 80% AMI, this assisted housing stock is not large enough to fully meet the need left within the supply of market-rate housing.<sup>9</sup>

Figure 6 - 1: Percent of Craigslist listings priced affordably by income level

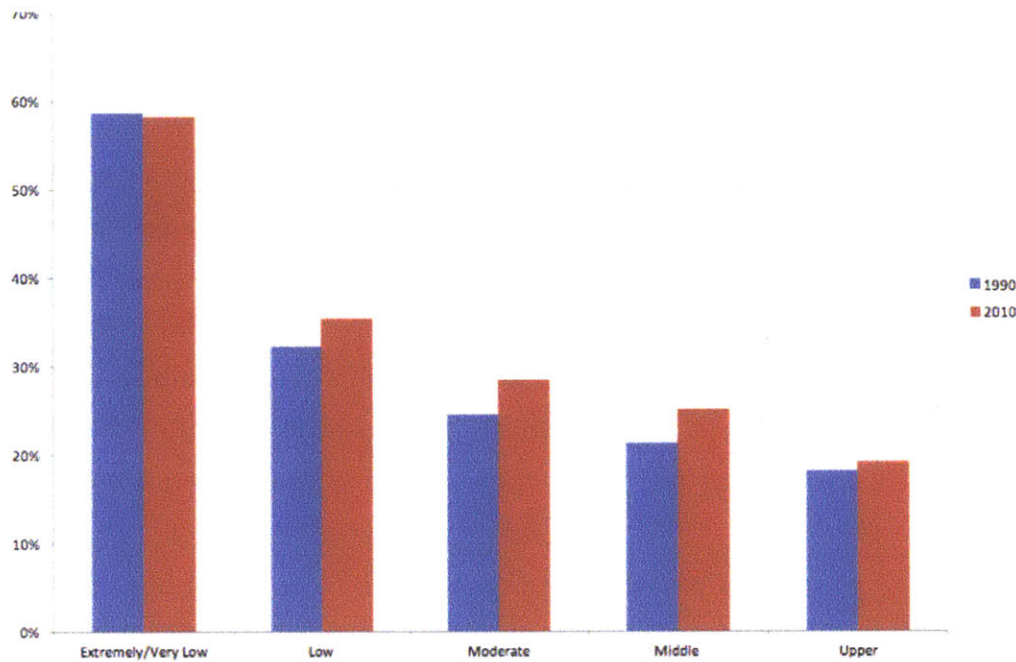


Source: *Housing For San Francisco Residents*<sup>10</sup>

According to the U.S. Census, 42.7% of San Francisco residents are paying at least 30% of their income for housing costs.<sup>11</sup> Among the cities examined in this report, San Francisco is second only to Los Angeles in this respect, where 58.0% of residents face a similar rent burden. Between 1990 and 2010, San Francisco's moderate-income households were most affected by rising housing costs. Figure 6-2 shows the change in housing cost burden by income group over the past two decades. Upper-income households faced a slightly larger burden, while extremely- and very low-income households experienced a slightly smaller burden. The three groups in the middle, however – low-, moderate-, and middle-income households – experienced noticeable cost increases.



**Figure 6 - 2: Average Housing Costs as % of Household Income, San Francisco Income Groups, 1990 & 2010**



Source: *Housing For San Francisco Residents (City and County of San Francisco, 2012)*<sup>12</sup>

Overall, 39.3% (49,242 households) of San Francisco homeowners are paying more than 30% of income for housing costs, while 44.7% (89,443 households) of renters are similarly burdened.<sup>13</sup> As in other cities examined in this paper, a larger share of lower-income households face housing cost burdens than higher-income households. For example, 36% of renters with incomes between 60% and 80% AMI have housing that is unaffordable, but 44% of households with incomes between 40% and 60% AMI pay rent in excess of 30% of their income. Similarly, 41% of homeowners with incomes between 80% and 100% AMI have unaffordable housing, as do 37% of homeowners with incomes between 100% and 120% AMI and 31% of those with incomes between 120% and 150% AMI.<sup>14</sup>

## 6.2 ESTABLISHING INCLUSIONARY ZONING

San Francisco was one of the first municipalities in the U.S. to implement a linkage program in the early 1980s, known as the Office/Housing and Production Program (OHPP). As of 2011, the Jobs-Housing Linkage Fee Ordinance applies the following in-lieu fee amounts, on a per square-footage basis, with variation for the type of commercial activity: \$18.62 for Entertainment, \$14.95 for Hotel, \$19.96 for Office, \$13.30 for Research and Development, and \$18.62 for Retail.<sup>15</sup>

According to Chandra Egan, San Francisco's Inclusionary Housing Program Manager, the original incarnation of IZ existed between 1992 and 2002, and did not allow for an off-site option. The set-aside was 10%, and it only applied to planned unit developments (PUDs) and projects requiring a conditional use permit. Few projects fell under these categories, because the city is largely built out and has few vacant lots big enough for a PUD.<sup>16</sup> For-sale units had to be affordable to households earning 100% AMI, and rental units were reserved for 60% AMI households. In 2002, an official Inclusionary Affordable Housing Program was established, with a 12% on-site set aside as well as 17% off-site and in-lieu fee payment options; income ranges remained the same. According to Peter Cohen of the Coalition of Community Housing Organizations, the original intent of San Francisco's ordinance was to support economic integration and limit gentrification.<sup>17</sup> However, according to Tim Colen of the Housing Action Coalition, over time the City has moved away from these goals so as not to reduce development.<sup>18</sup>

The Inclusionary Housing Program underwent modifications in 2006. First, the project threshold was reduced from 10 to 5 units. Additionally, the percentage of affordable units was increased to 15% if built on-site and 20% if built off-site or in-lieu fee payments were made. This increase in percentage indicates a continued preference for on-site construction, as it can be seen as a disincentive for developers to take advantage of the other options. The in-lieu fee payment was tied to the off-site percentage, so it was also disincentivized. Additionally, the affordability of off-site units changed; previously, ownership below-market rate units had to be restricted to 100% AMI; this was lowered to 80% AMI, or offering the units as rental. The program's overall income limits were also lowered, as income percentages became based on the City of San Francisco's AMI (\$75,000 in 2006). Previously, the AMI had been \$82,000, which included the more affluent communities of Marin, San Mateo, Contra Costa, and Alameda.<sup>19</sup> Finally, a geographic limitation was imposed: off-site construction of affordable units had to occur within 1 mile of the market-rate project.

Some neighborhoods within the city have recently been zoned to allow for more development, and as a result, inclusionary set asides have increased in these areas as well.<sup>20</sup> In 2008, the San Francisco Planning Code was amended by Section 419, which established affordable housing requirements in the UMU Zoning Districts of the Eastern Neighborhoods. It also created the Land Dedication Alternative in the Mission NCT District. The City is targeting specific neighborhoods – the Mission, Potrero Hill, East SoMa, and the Central Waterfront – for new housing construction. Section 419 requires new housing construction in these neighborhoods to meet additional affordability requirements, either through on-site construction or new alternative methods. The Planning Code



states that new requirements and fees in these neighborhoods have been structured by tier “to ensure feasibility.”<sup>21</sup> The areas under consideration are sites within the UMU District, and the tiers vary by the height increases established in the Eastern Neighborhood Plan; Table 6-2 shows how the set-aside requirements vary from the typical 15% on-site and 20% off-site or fee payment standards. Note that income restrictions are unchanged.

**Table 6 - 2: Increased Inclusionary Requirements in the Eastern Neighborhoods**

Tier	Height Increase	On-site Requirement	Off-site/In-lieu requirement
<b>A</b>	Less than 8'	18%	23%
<b>B</b>	Between 9 and 28'	20%	25%
<b>C</b>	Greater than 29'	22%	27%

Source: San Francisco Planning Code, Sec. 419.3. Application of UMU Affordable Housing Requirements

The City also established additional flexibility for the Eastern Neighborhoods Plan. The first is the “Middle Income Alternative,” which allows developers to build units affordable to households earning incomes between 120 and 150% AMI, with an average of 135% AMI. The second alternative is land dedication, which permits developers to donate a certain percentage of a site to the City and County of San Francisco if the dedicated site will yield at least 40 affordable units – though the Mayor’s Office of Housing has the discretion to approve sites that result in as few as 25 affordable units. Requirements for these alternatives are summarized in Table 6-3. Additionally, inclusionary requirements – whether on-site, off-site, or via in-lieu fee payments – shall be reduced by 3% for projects that are 100% rental.

**Table 6 - 3: Alternative Means of Complying with Inclusionary Requirements**

Tier	Middle Income Set-aside Requirement	Land Dedication Alternative	
		Sites < 30,000 ft <sup>2</sup> of developable area	Sites > 30,000 ft <sup>2</sup> of developable area
<b>A</b>	30%	18%	23%
<b>B</b>	35%	20%	25%
<b>C</b>	40%	22%	27%

Source: San Francisco Planning Code, Sec. 419.5. Alternatives to the Inclusionary Housing Component

Analysis of the amendments made to the San Francisco Planning Code via Section 419 indicates the City’s concern for moderate- and middle-income housing production. No other City examined in this paper is using inclusionary requirements to deliver housing affordable to households with earning incomes between 120% and 150% AMI (between \$85,000 and \$106,500 using 2010 Census data).



However, the set-aside amount increased for housing that is less affordable; this shows the benefits of flexibility, and the ability to incentivize different outcomes. Though this may be controversial to some housing advocates, the City desires more housing affordable to middle income households. Developers prefer to deliver housing at these higher AMI levels, because the subsidy required is smaller as well.

San Francisco is planning on examining its inclusionary ordinance in 2012. The ordinance was supposed to be updated again in 2011, five years after its most recent update. This was delayed a year, but the City is waiting on an Economic Feasibility Analysis to get a sense of the impacts of their ordinance.<sup>22</sup> Tim Colen of the San Francisco Housing Action Coalition stated that the City's inclusionary ordinance has been impacted by the recession and instability in the real estate market, and as a result, it has not been delivering affordable housing.<sup>23</sup> However, as explored at the beginning of this chapter, San Francisco was not as negatively impacted by the recession as many cities, and is currently experiencing a rebounding of the market, particularly for rental units. Such changes offer the possibility of creating more affordable housing through the Inclusionary Housing program, but more likely will result in collection of more fee payments, due to a recent restructuring of the ordinance that will be explained in section 6.3.1.

### 6.3 FLEXIBLE ALTERNATIVES

In San Francisco, the director of former Mayor Gavin Newsom's Office of Housing stated in 2006 that "The mayor's office would like to see the affordable units built on site whenever possible."<sup>24</sup> Off-site development is disincentived because the affordable units must be located within one mile of the market-rate project. At the time, Supervisor Maxwell "pushed for the mile radius rule because she was concerned about economic segregation caused by the developers building affordable units only in low-income areas, which have very few retail stores or other commercial services."<sup>25</sup>

Like in the previous two chapters, my interviewees in San Francisco were also supportive of flexibility. Tim Colen, the Executive Director of the San Francisco Housing Action Coalition, states that it is the least brain damage and cheapest alternative to just 'fee out.'<sup>26</sup> Paul Campos of the Bay Area chapter of the Building Industry Association argues that on-site construction is the least effective, least efficient, and most costly option.<sup>27</sup> Peter Cohen, the Executive Director of San Francisco's Coalition of Community Housing Organizations, sees flexibility as a way to create the best outcome and enhance how IZ works in the real world – not to increase convenience for developers and save them money.<sup>28</sup> For instance, on-site construction is not desirable for every building typology or

geography. Moderate-income families typically do not want to live in large high-rise towers located downtown; this echoes concerns raised in other sections of this report.

Private developers are also supportive of flexible alternatives. As James Burling of the Pacific Legal Foundation argues, developers are averse to building mixed-income projects because the purchasers of market-rate housing assume that people occupying subsidized housing do not meet the same community standards as far as their ability to keep their units looking good and following societal rules in terms of parking and noise.<sup>29</sup> Furthermore, it is more cost effective to create separate projects so that affordable units can be built according to different standards. Mr. Burling bemoans inclusionary ordinances requiring affordable units to be identical to the market-rate units, arguing that using cheaper materials for affordable units is good financial sense.

Paul Campos of the Bay Area chapter of the Building Industry Association argues against IZ's focus on income-mixing at the building-level, because sprinkling a few moderate-income households into a market-rate subdivision does not truly address the unaffordability problem. Furthermore, the people who buy a subsidized unit are not jumping up and down for joy because they are able to live next to someone whose paycheck is higher – they are excited about the physical housing.<sup>30</sup> IZ treats people that live in affordable housing as an undesirable commodity, perpetuating a dangerous assumption based on prejudice.

It was not until 2002 that developers in San Francisco were allowed to satisfy inclusionary requirements through off-site construction or in-lieu fee payments. In 2006, to create a relationship between the market-rate and off-site units, the city imposed a 1-mile radius from the market-rate development in which the affordable project could be located. Peter Cohen of the Coalition of Community Housing Organizations would like to see the 1-mile radius tightened and replaced with specific neighborhood boundaries to honor the original intent of the ordinance, addressing the threat of gentrification. There have been few off-site projects built. In-lieu fees are supposed to be updated annually based on the consumer construction index, but according to Chandra Egan of the Mayor's Office of Housing, the City has not updated them since 2008, because it is felt that the index does not accurately reflect what is happening in the marketplace.<sup>31</sup> The fee for a two-bedroom unit was set at \$334,478 in 2008.<sup>32</sup>

After being deposited in the Citywide Affordable Housing Fund, in-lieu fees can be used in several ways. The first, and most typical, is to build housing that is "affordable to qualifying households



subject to the conditions of this Section.” In other words, in-lieu fees should be used for other affordable projects that are targeted for households of low- and moderate-incomes (as opposed to extremely or very low incomes). Fees can also be used to provide assistance to low- and moderate-income homebuyers or pay for the costs of monitoring and administering the Inclusionary program. Additionally, 10% of all in-lieu fees collected will be diverted to the Small Sites Fund, to purchase properties of less than 25 units to preserve as affordable for qualifying households.<sup>33</sup>

Typically, the City bundles the in-lieu fees with other funds and uses them as leverage for affordable projects by issuing a Notice of Funds Available (NOFA). Tim Colen expects that the affordable projects financed with the fees tend to go wherever the costs are low, such as South of Market, Treasure Island, and the eastern neighborhoods, and rarely to fancier neighborhoods.<sup>34</sup> Like interviewees in other cities, Chandra Egan states geographic patterns are based on private development. Thus, because the western part of the city is mostly built out, most projects are going to be located in the southeast part of town due to its greater availability of land.<sup>35</sup>

In a March 2012 article published by the *New York Times*, it was reported that before 2010, 75% of new construction projects receiving permits would build affordable units on-site. This dropped to 55% after changes were introduced to make it easier for developers to pay fees, according to a report released in January by the city’s budget and legislative analyst. Reporter Scott James noted that these changes allow developers to “possibly profit more in the hot rental market.”<sup>36</sup> Mr. Colen says stakeholders feel the City’s inclusionary ordinance is relatively rigid and inflexible, and would like to see increased flexibility, such as an increased set-aside requirement in exchange for delivering units at a higher AMI level, like the Middle Income alternative in the Eastern Neighborhoods Plan. Mr. Colen feels there are not enough options built into the ordinance, and would like the city to allow for other options such as land dedication.

### **6.3.1 Nexus Studies: Getting Around the Palmer Decision**

In response to the Palmer decision, San Francisco flipped its Inclusionary Affordable Housing Ordinance in late 2010. In February of that year, the Board of Supervisors adopted temporary measures, which were made permanent in December. The official name of the program became the Affordable Housing Fee, and on-site or off-site construction (or a combination) became the alternative. The fee is calculated based on a 20% set-aside, and all projects are obligated to pay it. This communicates that the City cares more about collecting a fee than creating mixed-income housing.<sup>37</sup> However, San Francisco is trying to create a systematic way



for developers to voluntarily choose to offer affordable rental units on-site. According to Mr. Cohen of the Coalition of Community Housing Organizations, the City is exploring creating a permanent “Costa Hawkins exemption agreement” to which developers could apply. Currently, if a developer wants to build affordable units on- or off-site, the project must be exempt from the Costa Hawkins Rental Housing Act, which can be achieved by receiving public financing or other public assistance, such as a density bonus.

During our interview, Mike Rawson of the Public Interest Law Project noted that the interpretation of the Costa Hawkins Act through the Palmer decision came at a particularly bad time, because the demise of the housing market has shifted tenure choices from ownership to rental housing.<sup>38</sup> If not for the Palmer decision, inclusionary ordinances in cities across California would be producing affordable rental units. However, now that inclusionary requirements cannot apply to rental projects, and there is little activity going on in terms of for-sale projects, the state is missing out on untold numbers of affordable units.

California’s Costa-Hawkins Act could be amended to differentiate inclusionary zoning from rent control, thus excluding IZ from the law and moving past the Palmer decision. As Nadia I. El Mallakh wrote in the *California Law Review*, “inclusionary zoning and rent control are both land-use tools employed to promote affordable rental housing by impacting rental rates,” but “unlike the legislature’s findings regarding extreme rent control programs, inclusionary zoning promotes rather than undermines the state’s affordable housing goals.”<sup>39</sup> There have been attempts to find a legislative fix to clarify that inclusionary zoning ordinances do not conflict with the intent of the Costa-Hawkins Act. Recently, SB 1814 failed to pass the legislature by a narrow margin.

If the issue is not addressed at a state-wide level, cities will need to complete nexus studies, like in Santa Monica, to demonstrate a connection between market-rate housing construction and an increased need for affordable housing. According to Mike Rawson, communities are trying to develop alternative programs, similar to San Francisco’s Affordable Housing Fee, in which fee payments from developers are collected and used to build affordable projects.<sup>40</sup> The logic used in the nexus studies is usually that residents of market-rate housing will spend a specific portion of their after-tax disposable income on a variety of services occupied by people who earn low wages. An affordable housing fee is justified by the demand for such jobs. In April 2007, consulting group Keyser Marston Associates (KMA) released a nexus study for the City

and County of San Francisco establishing the relationship between market-rate housing and increased demand for affordable housing. The methodology uses the following linkages:

1. Sales price or rental rate of market-rate residential units →
2. Income of the household purchasing or renting said unit →
3. The household's annual expenditure of goods and services →
4. The jobs associated with the purchases and delivery of these services →
5. The income of workers doing the jobs in #4 →
6. Workers' household income →
7. The affordability level of housing needed for these workers

Three types of impacts are considered: direct jobs, which are generated at establishments directly serving new residents of market-rate housing (i.e., supermarkets); indirect jobs generated by increased demand at firms which service or supply the above establishments (i.e., accounting firms), and induced jobs, which are demanded as the new employees spend wages in the local economy.<sup>41</sup> Using two models, KMA determined that 100 market-rate condos generate a direct demand for 25 affordable units; considering all three types of impacts results in 43.31 affordable units demanded. Thus, San Francisco's inclusionary ordinance requiring a 20% set-aside is supported by the nexus analysis – in fact, a 30% set-aside would also be supported, at least for for-sale projects.<sup>42</sup>

However, not all parties agree with the conclusions of the nexus studies. Paul Campos of the Building Industry Association (BIA) argues that the recent influx of “prepackaged” nexus studies that purport to show a relationship between the causality of construction of market-rate housing and the need for affordable housing is unacceptable in terms of evidence and legality.<sup>43</sup> Mr. Campos states that the fees typically justified by nexus studies are between \$60,000 and \$70,000 per unit.<sup>44</sup> Assuming a developer of a 100-unit project must set aside 15 units as affordable or pay a fee of \$6,500,000 ( $\$65,000 \times 100$ ), that results in a payment of more than \$400,000 per affordable unit ( $\$6,500,000 / 15$ ). I have yet to encounter an inclusionary ordinance with such a high in-lieu fee payment, and in my experience, the fees are usually charged per affordable unit, not per market rate unit. Of course, a common argument against the in-lieu fees is that they are not set high enough, so if the numbers cited by Mr. Campos are correct, then perhaps the nexus studies actually create a more reasonable fee payment, from a city's perspective.



Residential nexus analyses (RNAs) were examined and criticized in a report released in November 2011, funded by a grant from the California Homebuilding Foundation. The author, Adam Cray, found that there are few consistent standards used by the consulting firms preparing these studies, and pointed out that the methodology has never been tested or peer-reviewed.<sup>45</sup> His specific faults with the studies, however, are questionable. For instance, Cray argues that the jurisdictional scope of the new affordable housing demanded is too wide; he uses commuting patterns in Berkeley as an example of households not living near their jobs. However, this ignores two important planning goals: attaining a job/housing balance by locating more residences near work, and reducing greenhouse gas emissions, by decreasing the very commutes Cray's argument relies on. Additionally, Cray finds fault that the studies calculate affordability gaps based on a survey of market-rate rent listings, rather than using HUD's Fair Market Rent figures. However, if the median value of an apartment in San Francisco was at the HUD Fair Market Rent – \$1,822 for a two-bedroom apartment – there would be less of a need for affordable housing, and thus IZ ordinances. As pointed out in section 6.1, Zillow calculates the median rent in the City at \$2,963 a month.<sup>46</sup>

Regardless of the merits of RNAs, cities are retroactively turning to such studies in an attempt to prevent legal challenges to inclusionary requirements. Unfortunately, nexus studies may not fully insulate IZ ordinances from legal challenges. Mr. Campos states that the California BIA recently filed a lawsuit against the City of San Jose's IZ ordinance, specifically regarding the insufficiency of the City's use of an increase in low-wage jobs as justification for a nexus between market-rate and affordable housing. He anticipates that either the BIA or a specific project would file a lawsuit against a nexus study in the future and claim IZ in general to be unlawful in absence of the destruction of existing affordable housing.

In addition to the results of the KMA nexus study, the City and County of San Francisco further justifies the Affordable Housing Fee in Section 415.1 (Findings) of its Planning Code. Reasons for the fee include:

- The City must provide direct financial assistance to developers of very-low, low, and moderate-income households – otherwise, construction of housing at these levels would not be financially feasible. The Affordable Housing Fee will be used in exactly this way
- Needing to meet the affordable housing goals established by the Association of Bay Area Governments
- Enabling affordable housing developers to leverage outside funding sources



- Creating economic activity, particularly in the form of construction work

### **6.3.2 Dissolution of redevelopment agencies in California**

As noted previously in this report, communities may turn to IZ as a result of the loss of affordable housing funds stemming from the recent dissolution of redevelopment agencies in California. Without RDAs, there is no longer a baseline of housing production for low-income households. Isela Gracian, Associate Directory of the East Los Angeles Community Corporation, noted that the city's redevelopment agency, the CRA, was a source of financing that represented a commitment that was frequently used by ELACC and other non-profit housing developers to obtain eligibility for other funding sources.<sup>47</sup> Without funding from the CRA, projects will become ineligible for other funding sources, such as LIHTC or federal loans. LA is not the only city which will experience these impacts.

There is still time to address the critical funding hole that has been created in California due to the dissolution of its redevelopment agencies. According to Mike Rawson of the Public Interest Law Project, it will take some time for redevelopment areas to wind down. Currently, there are funds available from bonds that have already been sold for affordable housing – because of restrictions limiting what these bonds can be used for, RDAs will not have to give this money to the state. Eventually, though, this bond money will run out.<sup>48</sup> Fortunately, the state legislature is currently working to pass a bill that would allow local governments to maintain access to redevelopment funds that were tied to affordable housing (\$1.36 million for low- and moderate-income housing).<sup>49</sup> Senate Bill 654 passed at the end of January 2012, but without an urgency clause, meaning the provisions will not take effect until next year. To be finalized, the measure must pass through the Assembly and be signed by Governor Brown.

## **6.4 PRODUCTION ANALYSIS**

San Francisco has estimated that to truly stabilize or reduce prices in the city, over 100,000 new units are needed.<sup>50</sup> Recently, it was determined by the metropolitan planning organization, the Association of Bay Area Governments (ABAG), that San Francisco needed to produce 31,000 new units over five years – approximately 6,000 units annually.<sup>51</sup> ABAG's Regional Housing Needs Determination further elaborated that 60% (18,000 units) of new construction should be available to households earning moderate, low, or very low incomes. In reality, the city has not succeeded in producing housing

at a rate fast enough to achieve these goals. In 2005, Mayor Gavin Newsom set a housing production goal for San Francisco of 3,000 new units every year for five years.<sup>52</sup> In 2008, the city surpassed this goal, with 3,340 units being built, 576 of which were affordable. More than two-thirds (390) of these affordable units are attributable to the Inclusionary Housing program.<sup>53</sup> Between 2005 and 2009, 14,397 units were built in the city (an average of 2,879 per year). 3,707 of these were restricted for low and very low-income households, representing 54% of the total need for units at these income levels during this period.<sup>54</sup>

Between 1992 and 2006, 550 units were developed through San Francisco's Inclusionary Housing program, and 2,000 were in the pipeline.<sup>55</sup> In the 1990s, before IZ was officially established as an ordinance, only 150 affordable units were produced.<sup>56</sup> As of 2012, San Francisco had approximately 20,800 deed-restricted units (18,000 rental and 2,800 ownership units), of which the inclusionary program has produced 1,500, with another 300 more units expected over the next two years.<sup>57</sup> This is equivalent to 7% of the total stock of deed-restricted affordable units. Peter Cohen of the Coalition of Community Housing Organizations reports that affordable units produced through IZ are meeting only 25% of projected needs.<sup>58</sup>

A total of 143 projects triggered inclusionary requirements in San Francisco between Fiscal Year 2002-2003 and Fiscal Year 2010-2011.<sup>59</sup> Of these, 113 built 733 affordable units on-site, 6 contributed 323 affordable off-site units, and 24 paid in-lieu fees. The City has collected approximately \$49 million in in-lieu fees as of December 2011, which has replaced 195 affordable units that may have otherwise been constructed. Between FY 2005-2006 and FY 2010-2011, the San Francisco Controller's Office reported that \$48,784,785 in fee revenue had been collected from the Inclusionary Housing Program; nearly all of it (\$48,717,426) was expended during this time period.<sup>60</sup> The money was used for 11 projects, creating a total of 1,086 affordable units. The City keeps good records of its in-lieu fee collection and expenditures; 10 of these projects were new construction, 1 was rehabilitation, and 1 unknown. \$203,328 was used for administrative expenses. The fees tend to go towards more vulnerable populations than would be the recipients of inclusionary units built on-site: more than half of the 12 projects were for homeless populations, and 3 others were for low-income seniors.<sup>61</sup>

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<sup>1</sup> "2010 U.S. Census", n.d., <http://www.census.gov/>.

<sup>2</sup> Casey Newton, “Allure of City Itself a Factor in S.F.’s Tech Boom,” *San Francisco Chronicle*, April 15, 2012, sec. A1, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2012/04/14/MNE41NUAUP.DTL&ao=all>.

<sup>3</sup> “Market Focus” (San Francisco Association of Realtors, April 2010), [http://www.sfrao.com/sites/sfar/files/documents/rao/Market\\_Focus\\_Report\\_April\\_2010.pdf](http://www.sfrao.com/sites/sfar/files/documents/rao/Market_Focus_Report_April_2010.pdf).

<sup>4</sup> Motoko Rich, “Homes Aren’t Selling, but in Apartments, It’s a Landlord’s Market,” *The New York Times*, February 25, 2012, New York edition, sec. A1, <http://www.nytimes.com/2012/02/25/business/homes-arent-selling-but-its-an-apartment-landlords-market.html?pagewanted=all>.

<sup>5</sup> “Zillow,” *Local Info*, n.d., <http://www.zillow.com/local-info/>.

<sup>6</sup> “2006-2010 American Community Survey 5-Year Estimates,” *American Fact Finder*, n.d., [www.census.gov](http://www.census.gov).

<sup>7</sup> “2006-2010 American Community Survey 5-Year Estimates - S2503. Financial Characteristics,” *American Fact Finder*, n.d., [www.census.gov](http://www.census.gov).

<sup>8</sup> San Francisco Mayor’s Office of Housing, Controller’s Office, and Office of Economic & Workforce Development, “Housing For San Francisco Residents” (San Francisco, CA, February 13, 2012), <http://sf-moh.org/modules/showdocument.aspx?documentid=5808>.

<sup>9</sup> *Ibid.*, 36, 45.

<sup>10</sup> *Ibid.*, 33.

<sup>11</sup> “2006-2010 American Community Survey 5-Year Estimates.”

<sup>12</sup> San Francisco Mayor’s Office of Housing, Controller’s Office, and Office of Economic & Workforce Development, “Housing For San Francisco Residents,” 8.

<sup>13</sup> “2006-2010 American Community Survey 5-Year Estimates - DP04. Selected Housing Characteristics,” *American Fact Finder*, n.d., [www.census.gov](http://www.census.gov).

<sup>14</sup> “Briefing Book: San Francisco Mayor’s Office of Housing State of the Housing Market Study” (Siefel Consulting, April 2012), 31, <http://sf-moh.org/modules/showdocument.aspx?documentid=5818>.

<sup>15</sup> “New Jobs-Housing Linkage Fee, Effective 8/1/11,” City & County of San Francisco, *Mayor’s Office of Housing News*, n.d., <http://sf-moh.org/index.aspx?page=705>.

<sup>16</sup> Nick Brunick, Lauren Goldberg, and Susannah Levine, “Large Cities and Inclusionary Zoning” (Business and Professional People for the Public Interest, November 2003), 13, [http://www.snrpc.org/WorkforceHousing/Development/large\\_cities\\_incl\\_zoning.pdf](http://www.snrpc.org/WorkforceHousing/Development/large_cities_incl_zoning.pdf).

<sup>17</sup> Peter Cohen, phone interview, February 14, 2012.

<sup>18</sup> Tim Colen, phone interview, January 30, 2012.

<sup>19</sup> Robert Seina, “City Poised to Require More Affordable Housing,” *San Francisco Chronicle* (San Francisco, CA, July 25, 2006), sec. B-1, <http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/07/25/BAGEVK4O6L1.DTL>.

<sup>20</sup> Colen, interview.

<sup>21</sup> “Sec. 419. Housing Requirements for Residential Development Projects in the UMU Zoning Districts of the Eastern Neighborhoods and the Land Dedication Alternative in the Mission NCT District” (San Francisco Planning Code, n.d.), 419.1.C.

<sup>22</sup> Colen, interview.

<sup>23</sup> *Ibid.*

<sup>24</sup> Seina, “City Poised to Require More Affordable Housing.”

<sup>25</sup> *Ibid.*



- <sup>26</sup> Colen, interview.
- <sup>27</sup> Paul Campos, phone interview, February 13, 2012.
- <sup>28</sup> Cohen, interview.
- <sup>29</sup> Jim Burling, phone interview, February 6, 2012.
- <sup>30</sup> Campos, interview.
- <sup>31</sup> Chandra Egan, phone interview, January 31, 2012.
- <sup>32</sup> “Annual Housing Report” (San Francisco Mayor’s Office of Housing, 2008), 8, <http://sf-moh.org/Modules/ShowDocument.aspx?documentid=4505>.
- <sup>33</sup> “Sec. 415. Housing Requirements for Residential and Live/Work Development Projects” (San Francisco Planning Code, n.d.), 415.5.f.
- <sup>34</sup> Colen, interview.
- <sup>35</sup> Egan, interview.
- <sup>36</sup> Scott James, “In a City With Record Housing Prices, Nowhere to Go but Up,” *The New York Times*, March 9, 2012, National edition, sec. A19A, <http://www.nytimes.com/2012/03/09/us/with-record-san-francisco-housing-prices-no-where-to-go-but-up.html>.
- <sup>37</sup> Cohen, interview.
- <sup>38</sup> Mike Rawson, phone interview, February 8, 2012.
- <sup>39</sup> Nadia I. El Mallakh, “Does the Costa-Hawkins Act Prohibit Local Inclusionary Zoning Programs?,” *California Law Review* 89, no. 6 (December 2001): 1871–1872.
- <sup>40</sup> Rawson, interview.
- <sup>41</sup> “Residential Nexus Analysis City and County of San Francisco” (Keyser Marston Associates, April 2007), 3, <http://www.sf-planning.org/Modules/ShowDocument.aspx?documentid=8380>.
- <sup>42</sup> *Ibid.*, 8.
- <sup>43</sup> Campos, interview.
- <sup>44</sup> *Ibid.*
- <sup>45</sup> Adam Cray, “The Use of Residential Nexus Analysis in Support of California’s Inclusionary Housing Ordinances: A Critical Evaluation”, November 2011, 3, [http://www.nahb.org/fileUpload\\_details.aspx?contentID=171102](http://www.nahb.org/fileUpload_details.aspx?contentID=171102).
- <sup>46</sup> “Zillow.”
- <sup>47</sup> Isela Gracian, phone interview, March 9, 2012.
- <sup>48</sup> Rawson, interview.
- <sup>49</sup> Torey Van Oot, “California Senate OKs Bill on RDAs’ Affordable Housing Funds,” *The Sacramento Bee, Capitol Alert*, January 31, 2012, <http://blogs.sacbee.com/capitolalertlatest/2012/01/california-senate-rda-affordable-housing-dissolve-redevelopment.html>.
- <sup>50</sup> James, “In a City With Record Housing Prices, Nowhere to Go but Up.”
- <sup>51</sup> “Section 419, Eastern Neighborhoods Housing Requirements,” 419.1.A.
- <sup>52</sup> “Annual Housing Report,” 5.
- <sup>53</sup> *Ibid.*, 8.
- <sup>54</sup> “Section 415, Residential Housing Requirements,” 415.1.A.2.
- <sup>55</sup> Seina, “City Poised to Require More Affordable Housing.”
- <sup>56</sup> Cohen, interview.

<sup>57</sup> San Francisco Mayor's Office of Housing, Controller's Office, and Office of Economic & Workforce Development, "Housing For San Francisco Residents," 36, 45.

<sup>58</sup> Cohen, interview.

<sup>59</sup> "Developer Choices Under Inclusionary Housing Program Through December 2011" (City of San Francisco, n.d.).

<sup>60</sup> "A1-9. Job Housing Linkage Fee and Inclusionary Affordable Housing Program" (San Francisco Controller's Office, n.d.), 55.

<sup>61</sup> Ibid., 59.

## 07. ANALYSIS & RECOMMENDATIONS

### 7.1 SUMMARY OF RESULTS

This section synthesizes the information presented in the previous three cases, and attempts to answer the research questions that shaped this thesis and were initially presented in section 4 of chapter 1. A summary table of each jurisdiction's inclusionary requirements and the results can be found in Appendix C.

#### **7.1.1 What are the characteristics of the flexible alternatives offered in each jurisdiction? Are developers able to fulfill the affordable housing obligation by constructing the units off-site? Are developers permitted to pay fees in lieu of building affordable units?**

Every inclusionary ordinance examined for this study allows developers of market-rate residential projects to satisfy the affordable housing obligation by either paying fees in-lieu of construction or building the affordable units off-site. Some cities, such as San Francisco, allow developers to decide how they would like to comply with the inclusionary requirements, while Boston, Pasadena, West Hollywood, and LA's Central City West Specific Plan require developers to seek municipal approval for alternative means of compliance.

#### **7.1.2 How have the flexible options changed over time? Have cities become more or less permissive in allowing developers to 'buy out' of constructing affordable units on-site? Why or why not?**

Over time, more cities have implemented more flexible options. For example, San Francisco only allowed for off-site construction and in-lieu fee payments beginning in 2002. There is anecdotal evidence that as in-lieu fee amounts have tended to increase over time, cities like Boston have become more willing to accept fee payments in-lieu of construction. However, without accurate data tracking the number of projects each year required to build inclusionary units and the subset of those permitted to fulfill the obligation through alternative means of compliance, it is difficult to truly state how permissiveness has changed over time. It is possible to track an increasing number of projects paying fees, particularly in the mid-2000s compared to earlier in the decade, but without comparable information about overall development activity in the city, it is impossible to determine whether this increasing number is due to increased permissiveness or an overall increase in activity in the real estate market.



**7.1.3 How are the in-lieu fee payments calculated? Are more units required when this option is used? What do municipalities do with the collected funds?**

Boston, San Francisco, and Los Angeles's Central City West Specific Plan define their in-lieu fees as a set amount per affordable unit required. Boston charges \$200,000 per unit, regardless of size, while San Francisco charges \$334,478 for a two-bedroom unit. The CCWSP differentiates between the income level targeted: a very low-income unit is \$146,354, while a low-income unit is \$114,788. This represents the larger subsidy required for a unit restricted to a lower income. In 2011, Santa Monica increased its affordable housing unit development cost to \$287,003 – but it only applies when developers must build a fractional unit less than 0.75. Boston's fee was set in 2006, San Francisco's in 2008, and the CCWSP in 2012.

The other method for calculating in-lieu fee payments is on a square-footage basis, reflecting unit size. The cities adjacent to Los Angeles – Santa Monica, Pasadena, and West Hollywood – calculate their fees in this way. Santa Monica's fee structure distinguishes between tenure type, charging \$27.35/ft<sup>2</sup> for apartments and \$31.94/ft<sup>2</sup> for condominiums; additionally, developers of different types of projects (for instance, projects in residentially-zoned land) automatically pay a smaller portion of these amounts. West Hollywood's fee varies by overall project size, charging between \$11.51/ft<sup>2</sup> for a 2-unit project and \$24.68/ft<sup>2</sup> for a 10-unit project. Pasadena's fee also varies by project size and tenure type, as well as geographic subarea; fees range from a minimum of \$1.09/ft<sup>2</sup> to a maximum of \$57.86/ft<sup>2</sup>.

Santa Monica and San Francisco both increase the affordable housing obligation for developers who build affordable units off-site: San Francisco requires a 20%, instead of 15%, set-aside, while Santa Monica requires an additional quarter of the on-site set-aside. The City of Los Angeles proposed a similar measure for its citywide IZ ordinance. Only San Francisco increases the requirement (from 15% to 20%) for developers paying in-lieu fees.

Every city places its in-lieu fees in a separate, dedicated fund to provide financing for other affordable housing projects. Some also use the money for housing rehabilitation projects, moderate-income homeowner assistance, and administrative costs.

**7.1.4. Do these jurisdictions provide any benefits to developers to offset the costs of providing affordable housing?**

Unlike in the suburban areas of early IZ, none of the jurisdictions examined in this paper provide any specific benefits to developers to compensate them for participating in the inclusionary program. A report examining IZ in other large cities concluded that urban jurisdictions tend to offer fewer cost offsets because demand for housing is so strong that new projects are still financially viable and profitable.<sup>1</sup> In California, all developers are able to take advantage of the state's density bonus law; furthermore, Los Angeles has its own density bonus ordinance with additional incentives for developers to provide affordable housing. Any residential developer is able to receive a density bonus; it is not tied specifically to mandatory inclusionary ordinance.

Some cities have informally required inclusionary requirements as a result of a rezoning. For example, in Boston, it was often stated by interviewees that the IDP is tied to the general idea of seeking zoning relief, which most projects must seek due to the city's outdated zoning code. Additionally, the Harrison/Albany corridor in the South End was recently re-zoned and inclusionary requirements beyond the IDP were established as a direct result. San Francisco's Eastern Neighborhoods rezoning follows a similar logic. For LA's Central City West Specific Plan, it was stated that inclusionary requirements were put in place after the neighborhood was up-zoned to allow for more development.

All of these differ from the original compensatory benefits provided to developers in suburban areas, where the benefits were applied after the inclusionary requirement was triggered. In these urban areas, the benefits (i.e., additional development rights) are the first step, and additional inclusionary requirements are imposed as a result.

#### **7.1.5 At what scale is affordable housing prioritized through the IZ policies?**

IZ is used for different purposes in different cities. Both Santa Monica and San Francisco have implemented geographic restrictions on off-site construction of affordable units, and the City of Los Angeles proposed doing something similar with its citywide ordinance. This indicates a preference for affordable housing on a neighborhood level – creating mixed-income buildings is not essential, but providing affordable housing within all neighborhoods is more desirable than concentrating a city's affordable housing in specific areas. Boston tends to take a blended approach: it was stated many times that Mayor Menino strongly prefers affordable units to be built on-site. However, many projects ultimately satisfy the IDP obligation through a

combination of on-site construction and in-lieu fees. These fees are not tied to any particular neighborhood boundaries, though this idea is popular among some advocates.

Despite San Francisco's geographic radius limit for off-site construction, it seems to be the only city without some sort of approval mechanism for how developers comply with IZ obligations. In other words, the other cities maintain authority to negotiate and approve how a developer may comply with the inclusionary requirement, but San Francisco allows developers to choose. Furthermore, since the city's IZ ordinance was flipped and the fee payment replaced construction as the standard method of compliance, this signals that the city has no preference in terms of creating mixed-income communities.

#### **7.1.6 How have IZ ordinances been affected – if at all – by recent macroeconomic and legal forces?**

Like communities across the country, Boston, Los Angeles, and San Francisco witnessed a dampening in development activity due to the recent bursting of the housing bubble. However, price drops were not as extreme as those experienced by many other places. Boston and San Francisco in particular are currently facing very strong rental markets, perhaps fueled by employment growth in tech-related sectors.

Cities in California were affected by the Palmer decision in a variety of ways. Los Angeles's plans for a citywide IZ ordinance were stopped in their tracks, and the Central City West Specific Plan's inclusionary requirement can no longer apply to rental projects, only ownership. Santa Monica's Affordable Housing Production Program was relatively unaffected, because the city had commissioned a nexus study before the court case to justify its inclusionary requirements. San Francisco, however, reversed its ordinance to avoid legal trouble: construction of affordable units is now an option that developers must seek out on their own, and paying a fee is now the standard.

Cities in California have also been affected by the recent shuttering of the state's redevelopment agencies. Interviewees across the state reported concern over the loss of redevelopment funds, particularly for affordable housing. However, it might result in increasing support for inclusionary ordinances to produce affordable housing, particularly in cities such as Los Angeles, which do not have IZ. Other cities may increase inclusionary requirements if it seems the local real estate market can handle it. However, as explored in the



next section, IZ has seemed to always been unable to produce enough affordable housing to meet a community's entire need.

## 7.2 PRODUCTION ANALYSIS

How effective has inclusionary zoning been at producing affordable units? Is IZ a valid strategy to address affordability challenges? To determine this and compare across jurisdictions, it will be useful to examine average annual production on a per-capita basis. Unfortunately, a criticism frequently launched against IZ is the lack of adequate tracking and reporting of program results. I was only able to obtain data regarding the number of on- and off-site units produced in LA's Central City West neighborhood, Santa Monica, and San Francisco. The results of this analysis are shown in Table 7-1.

**Table 7 - 1: Per-Capita Production Analysis**

	Boston	Central City West	Santa Monica	San Francisco
2010 Population	617,594	3,792,621	89,736	805,235
Year program began	2000	1990	1988	1992
# of affordable units created (on-site)	896	660	839	1,052
# of affordable units created (off-site/with in-lieu fees)	Unknown	191	Unknown	1,086 with in-lieu fees
# of years for which data is available	10	11	13	8
Average annual unit production	89.6	77.36	64.54	267.25
Average annual unit production per 10,000 residents	1.45	0.20	7.19	3.32

Unfortunately, even this table has limitations, and the comparisons are not entirely accurate. For instance, San Francisco has released information about both on-site and off-site units as well as units produced with in-lieu fees. Santa Monica, however, does permit off-site construction and in-lieu fee payments, but the results of these options are unknown. Finally, Central City West's data only includes on-site and off-site units, and not units produced through in-lieu fees (though to date, only one project has been approved to pay fees). Additionally, the CCW neighborhood's population is unknown, so I used the population for the entire city. With these limitations in mind, the table shows

that despite SF's larger annual production, Santa Monica's AHPP produces more affordable housing per person in the city.

Most of my interviewees were in accord with the literature that IZ is only one piece of the affordable housing puzzle. According to Paul Silvern of the economic development-consulting firm HR&A Advisors, taken alone, it is not likely to be completely effective, because it does not produce enough units.<sup>2</sup> Under IZ, the production of affordable housing is dependent on residential market cycles, and if market-rate projects aren't being built, then neither are affordable units (or in-lieu fees being collected). This is one of the downsides of IZ as a sustainable solution to increasing housing affordability. Tim Colen of the San Francisco Housing Acton Coalition states that the City's inclusionary ordinance has been an important part of its affordable housing package, but it is not adequate.<sup>3</sup> Mike Rawson of the Public Interest Law Project argues that IZ cannot be the entire answer to the affordable housing puzzle because it is not economically feasible to create housing for very low-income households.<sup>4</sup>

The cities examined in this paper are unique because their real estate markets have been less obliterated than other cities across the country. There is a strong demand for rental units, especially in Boston and San Francisco. The validity of IZ in other cities may be more disputed. As Jim Burling, the Director of Litigation for the Pacific Legal Foundation, argues, there is no longer the same clamor for affordable housing due to the decline in middle-income housing prices throughout the state of California.<sup>5</sup> Market-rate housing is much more affordable now. A related issue that applies to all cities with inclusionary ordinances, regardless of the strength of the real estate market, is that the income-restricted for-sale units are affordable to families at the top of the low-income category. If a family who purchased one of the income-restricted units is unable to maintain its income, they will not be able to pay their mortgage.

The Non-Profit Housing Association of Northern California estimated that between January 1999 and June 2006, 29,281 affordable units were created as a result of inclusionary housing policies in the state.<sup>6</sup> This is impressive, though compared to the yearly average number of units – 17,000 – attributed to the federal Low-Income Housing Tax Credit (LIHTC) program, which also targets a deeper level of affordability, it is no wonder that there are no claims for IZ being the ultimate solution to the nation's housing unaffordability problem.<sup>7</sup> The units produced through inclusionary programs in cities like Boston and San Francisco are popular, and unable to meet a large percentage of these cities' needs. Sheila Dillon, Housing Advisor to Mayor Menino, reported that in the past, there have been 1,000 applicants for 12 inclusionary units.<sup>8</sup>



Boston-based development consultant Yanni Tsipis sees IZ as an inefficient way to deliver affordable housing, because of the scale it operates at.<sup>9</sup> Supply-side subsidies like Low-Income Housing Tax Credits (LIHTC) and Community Development Block Grants (CDBG) deliver affordable housing in larger volumes, which is more efficient. Smaller chunks of housing, as delivered through IZ programs, are less efficient, harder to manage, and choppy in terms of timing. This argument makes a good case for flexibility, as in-lieu fees can provide gap financing for larger, 100% affordable projects built on a larger scale.

## 7.3 RECOMMENDATIONS

My interviews and literature review have yielded a variety of best practices for inclusionary ordinances, five of which are detailed below.

### 7.3.1 In-lieu fees

A common problem is what amount to set the in-lieu fee at. As stated in a 2006 MACDC report, “the integrity of a cash-out fee rests upon the assumption that the value of the fee is at least equal to the value of the subsidy required to build the forgone unit elsewhere.”<sup>10</sup> The in-lieu fees should be equivalent to the cost of constructing an affordable unit. If they are set too low, in-lieu fees can serve as a major disincentive to on-site construction. Although the previous chapters have shown the benefits of flexible IZ ordinances, on-site affordable units should still be a reasonable outcome. An IZ ordinance should not be too rigid as to always require affordable units to be built on-site, nor should it consistently result in fee payments. A mix is good, and the two results should be equivalent – in other words, neither should be overly incentivized. There are benefits to both, and IZ ordinances must be crafted so both result in a meaningful contribution of affordable units. Setting the fee is tricky – as Joe Kriesberg stated, if it is too high, you risk killing the goose that laid the golden egg.<sup>11</sup> The fee needs to create a market dynamic that fosters a decent result either way – developers can build some affordable units on-site, or the City can get some real money.

Tim Colen, Executive Director of the San Francisco Housing Action Coalition, reports that there is a perception that the City’s inclusionary ordinance incentivizes construction of high-end housing, because it is too expensive for more moderate-income projects to finance the



additional cost. In other words, the inclusionary ordinance could be skewing the market by requiring small builders to pay the same rate as luxury developers. This is an important concern that could be addressed through a sliding scale fee. If IZ is supposed to result in more low- and moderate-income housing, but ultimately discourages non-luxury market-rate projects, then the tool is failing to achieve its goal. By charging an in-lieu fee, not at a flat rate but so it takes into consideration varying development costs among projects, this could solve the problem on the flexible end.

If fees are too low and do not accurately reflect the cost to construct a unit, projects with luxury units will be favored. A report by Charles C. Euchner and Elizabeth G. Frieze for Pioneer Institute for Public Policy Research & Rappaport Institute for Greater Boston use the example shown in Table 7-2 (using Boston's 2001 fee amount of \$52,000) to demonstrate that luxury units are encouraged because the fee represents a smaller percentage of the cost.

**Table 7 - 2: Cost to "cash out"**

	<b>Scenario 1</b>	<b>Scenario 2 (Luxury project)</b>
<b>Total units</b>	20	20
<b>Cost to build each unit</b>	\$300,000	\$600,000
<b>Total unit development cost</b>	\$6,000,000	\$12,000,000
<b>Affordable units (based on 15% set-aside)</b>	3	3
<b>Cost to cash-out (based on \$52,000/unit)</b>	\$156,000	\$156,000
<b>% of total unit development cost</b>	2.6%	1.3%

*Source: Overcoming Barriers to Housing in Greater Boston (2003)<sup>12</sup>*

Using \$200,000 per unit, which reflects Boston's current fee level, results in 10% and 5%, respectively, of the total cost to develop the units. The point here is that using a fixed amount of money encourages developers of luxury projects to cash out because it minimizes the impact of constructing the affordable units. The difference in the fee burden matters most at the margins. What is the percentage of the project that the fee represents? For more moderately priced units, the IZ fee represents a larger proportion of profit. This may encourage developers

to build luxury units, so as to create a cushion for the impact of IZ. Looking at the situation from another perspective, the more expensive land and development costs are, the more private developers lose when they build affordable units on-site.<sup>13</sup>

A fixed fee bears no nexus to the unique financial structures of each development.<sup>14</sup> In Boston, developers are lined up to opt out of the IDP with a \$200,000 per unit fee and a 15% set-aside requirement.<sup>15</sup> Noah Maslan, Director of Real Estate for Urban Edge, states that \$350,000 per unit would be more reasonable, though even that amount may not be sufficient to produce an affordable unit in some neighborhoods.<sup>16</sup> Joe Kriesberg of MACDC strongly advocated for a fee with a capped maximum that could be scaled up or down depending on the opportunity cost or savings the developer faces for not constructing affordable units on-site.<sup>17</sup>

### **7.3.2 Use in-lieu fees in a targeted and innovative manner**

Many of my interviewees advocated for the use of-lieu fee payments for activities besides new construction of affordable housing. For example, Yanni Tsipis believes funds could be put to good use to preserve expiring use projects, as neighborhoods have been facing a declining affordable housing stock due to private landlords converting properties to market rents.<sup>18</sup> James Burling of the Pacific Legal Foundation and Holly Schroeder of the Building Industry Association agree that the money can go further if used for preservation or rehabilitation, because new construction is the most expensive way to provide affordable housing.<sup>19</sup>

Another idea: if vacant homes are piling up due to the foreclosure crisis and rents are increasing due to demand for rental housing, municipalities should pursue policies to convert that housing into rental. Perhaps in-lieu fees could be used to fund property management expenses for this scattered-site model, or even to provide rent subsidies, similar to Section 8 vouchers, to individuals. Although this moves IZ and in-lieu fees away from the realm of housing production, it remains true to the ultimate goal of the tool: creating more affordable housing for low- and moderate-income residents.

An option proposed by Joe Kriesberg is to use in-lieu fees to provide homeless housing – though this would be serving a population different from the income groups typically receiving housing assistance through IZ. However, as in-lieu fees are already used for 100% affordable projects, which are likely serving populations with incomes less than 60% AMI – because that is what other public sources of funds are available for – the use of IZ for moderate-income



housing is already being ignored. For instance, San Francisco's fees have been used to fund a variety of housing projects for homeless residents.

Mr. Kriesberg also proposed linking in-lieu payments to affordable housing projects along the same transit line. This addresses the geographic concerns that have been frequently raised throughout this report. Cities including Santa Monica and San Francisco have geographic limits on where off-site affordable units can be built. Santa Monica's limit is  $\frac{1}{4}$  mile, but can be approved up to 1 mile. In San Francisco, affordable units can be located within 1 mile of the market-rate project, and Peter Cohen thinks this is too big due to the small size of many of the city's neighborhoods.

Geographic limits for off-site construction and reserving in-lieu fees for use on projects near the market-rate projects is an excellent way to strike a balance between flexibility and rigidity of IZ. Another form of compromise to allow for flexibility but still encourage on-site construction of affordable units is increasing the requirements for units built off-site or which fees are paid in-lieu of construction; for example, if the on-site set-aside requirement is 15% of market-rate units, developers who build off-site or pay fees could be required to do so according to a 20% set-aside.

The point is that overarching funding strategies should be discussed periodically, particularly in the context of what other resources are available. Noah Maslan, Director of Real Estate for the non-profit Urban Edge in Boston, feels strongly that the BRA must ensure that its investment strategy is aligned with larger trends in the real estate market.<sup>20</sup>

### **7.3.3 Increase flexible options**

Cities should allow private developers to partner with non-profit developers to propose a joint project. Although this can be challenging because the market-rate and affordable projects will need to be on the same timeline, it can be an efficient way for a private developer to fulfill an affordable housing obligation in a clear and recognizable manner. The community can know that the market-rate project is connected to the affordable project, which is a more visible fulfillment of IZ requirements than if the private developer pays in-lieu fees. Similarly, private developers should be permitted to satisfy IZ requirements through land dedication. The cost of land is an important aspect of overall development cost; by removing this from a non-profit's list of costs, affordable housing can be produced more efficiently.



#### **7.3.4 Automatically Update Fees**

Automatically updating fees is a good way to ensure that the in-lieu fees accurately reflect reality of building an affordable unit. Of course, for this to work, the fee itself has to be set in a rational way from the beginning. Tom Calahan of the Massachusetts Affordable Housing Alliance supports this modification specifically to remove the fee decision from the political realm. Santa Monica, LA's Central City West neighborhood, and San Francisco have adopted measures to annually adjust fees to address inflation and changes in the relationship between land value and construction costs.

#### **7.3.5 Manage funds in a clear and transparent manner**

When developers opt out and pay in-lieu fees, construction of affordable units becomes the city's responsibility. All of the cities examined in this paper place in-lieu fees in separate housing funds, but reporting is unfortunately inconsistent. In Boston, linkage funds are managed by the Neighborhood Housing Trust (NHT). In 2003, funds in the NHT amounted to nearly \$16 million.<sup>21</sup> The eligibility criteria for the NHT are similar to what was put in place for IDP funds. This seems redundant; it would be more efficient to manage all of the money in one place. Competitive criteria for linkage money includes:<sup>22</sup>

- The number and percentage of affordable units, including the number available to low-income (less than 50% AMI) populations and special needs populations
- The amount of NHT funds requested per affordable unit
- Affordability levels beyond the minimum requirement
- Will the project provide employment, financial, or management participation for minority- or women-owned businesses?
- Has the neighborhood previously received linkage funds?

The NHT releases a report periodically detailing all of the projects funded to date, including neighborhood location, amount of linkage money received, total units, and the number of affordable units. This type of transparency is admirable, and should be implemented for Boston's IDP and other cities. The BRA could also maintain a public website with information about every IDP transaction, both incoming and outgoing.

These lessons can and should be applied to all aspects of IZ programs. Different cities make different information publically available, which makes it difficult to compare the results of inclusionary ordinances. Santa Monica has been particularly transparent and thorough in its

public record-keeping about its Affordable Housing Production Program. Every year, a summary report is submitted to the City Council and placed in the city's website. However, the in-lieu fee amounts are no longer reported. The City of Pasadena's website has a document about the amount of in-lieu fees paid by individual projects, but there was no record of the on-site units created, or where the fees were used. For my data analysis, I relied on documents sent to me by various city agencies. There may be reasons to avoid revealing these details – for instance, if a developer gets a particularly 'good' deal – but the goals of transparency and government accountability dictate better and more thorough record-keeping: how many on-site units are created each year, in how many projects? How many off-site units are created? How many projects are permitted to pay fees in lieu of construction, and what projects are those fees later committed to? Without such information, it is impossible to accurately determine IZ's effectiveness at producing affordable housing.

## 7.4 IS INCLUSIONARY ZONING “FAIR”?

Since first embarking on research for this project, I was interested in the 'fairness' of IZ. Acknowledging that the concept was value-laden and normative, with different people seeing the situation in different ways, I nonetheless engaged my interviewees around this issue. Evaluating whether or not IZ is fair is well beyond the scope of this paper, and something I am doubtful could ever honestly be determined once and for all. The arguments are illuminating, however, and important to consider when crafting IZ ordinances.

Several of my interviewees argued vehemently against IZ in general, primarily because it unfairly targets developers to solve society's problem. As Jim Burling, an attorney who has represented multiple clients in anti-IZ cases, stated, developers are not responsible for a community's lack of affordable housing. Rather, they are convenient targets for cities, which treat them like ATM machines.<sup>23</sup>

Paul Campos of the Bay Area Chapter of the Building Industry Association (BIA) passionately disagrees with the notion that an industry that provides housing should be saddled with the burden of solving a societal problem like housing unaffordability.<sup>24</sup> IZ generates hostility and indignation on the part of the building industry more than any other regulatory requirement. Mr. Campos compared the burden imposed by IZ on similar actions against other producers – if grocers and computer companies are not forced to set aside a certain percentage of their products for lower-income people, why can such a burden be placed on the back of the industry supplying housing? Holly Schroeder, CEO of the Los

Angeles/Ventura chapter of the BIA attacked the logic of IZ from another angle by discussing SNAP (the Supplemental Nutrition Assistance Program, previously referred to as food stamps) – society provides support for food for low-income residents without requiring grocers to pay for it. It is illogical and paradoxical that municipalities argue that the production of housing creates a need for more affordable housing.<sup>25</sup>

Another frequent argument was that inclusionary zoning programs are considered burdensome in light of the other municipal requirements placed on developers. Susan Allen of The Drew Company made such an argument, noting that development pro formas are tight in Boston, and margins are thin – the more requirements a city places on the development community, the more likely it is that a project will become infeasible.<sup>26</sup> An issue raised by another Boston-based private developer is that the IDP only applies to residential projects.<sup>27</sup> The City also has a linkage program, but residential developers are held to a higher standard. If you think of the IDP and linkage as taxes on development, then they are calculated at two different tax brackets. This is the reason why Los Angeles's proposed Affordable Housing Benefit Fee is examining multiple types of development. However, San Francisco's linkage program charges developers of different office and commercial projects different values per square-foot, so perhaps Boston's variation is justified after all.

Mike Rawson, Co-Director of the Public Interest Law Project, can be considered Mr. Campos and Mr. Burling's ideological opposite. The infrastructure – schools, jobs, stores, roads – provided by municipalities provides substantial land value to developers, without which development would not occur. Without inclusionary zoning, developers would benefit from a large profit that exists due to actions besides their own. IZ steers windfall profit towards the general welfare of the community by creating a balanced housing stock.<sup>28</sup> Tom Calahan, the Executive Director of the Massachusetts Affordable Housing Alliance (MAHA), argues that because there is a lack of public support and a failure to meet the demand for affordable housing, it is incumbent upon government to be creative about how to meet housing needs.<sup>29</sup> Thus, governments must look to the private sector as an alternative method for creating affordable housing.

Several of my interviewees pointed out the hypocrisy of IZ – local and state governments claim to care about affordable housing, yet public funding sources have been increasingly reduced and eliminated. Paul Campos of the Building Industry Association would like to see the state put their money where their mouth is, rather than targeting private developers to finance affordable housing. If affordable



housing is really a top public policy priority, then the state needs to provide an ongoing, steady, reliable source of funding. Unfortunately, the current political and fiscal environment makes these changes unlikely to happen anytime soon.

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<sup>1</sup> Nick Brunick, Lauren Goldberg, and Susannah Levine, “Large Cities and Inclusionary Zoning” (Business and Professional People for the Public Interest, November 2003),

[http://www.snrpc.org/WorkforceHousing/Development/large\\_cities\\_incl\\_zoning.pdf](http://www.snrpc.org/WorkforceHousing/Development/large_cities_incl_zoning.pdf).

<sup>2</sup> Paul Silvern, phone interview, January 13, 2012.

<sup>3</sup> Tim Colen, phone interview, January 30, 2012.

<sup>4</sup> Mike Rawson, phone interview, February 8, 2012.

<sup>5</sup> Jim Burling, phone interview, February 6, 2012.

<sup>6</sup> *Affordable by Choice: Trends in California’s Inclusionary Housing Programs* (Non-Profit Housing Association of Northern California, 2007), 10, [http://nonprofithousing.org/pdf\\_attachments/IHReport.pdf](http://nonprofithousing.org/pdf_attachments/IHReport.pdf).

<sup>7</sup> Vinit Mukhija et al., “Can Inclusionary Zoning Be an Effective and Efficient Housing Policy? Evidence From Los Angeles and Orange Counties,” *Journal of Urban Affairs* 32, no. 2 (May 2010): 233.

<sup>8</sup> Sheila Dillon, in-person interview, January 26, 2012.

<sup>9</sup> Yanni Tsipis, in-person interview, December 4, 2011.

<sup>10</sup> Allen Penniman, *Building Better: Recommendations for Boston’s Inclusionary Development Policy* (Boston, MA: Massachusetts Association of Community Development Corporations, 2006), 17,

<http://www.chapa.org/pdf/MACDCizReport.pdf>.

<sup>11</sup> Joe Kriesberg, in-person interview, February 23, 2012.

<sup>12</sup> Charles C. Euchner and Elizabeth G. Frieze, *Getting Home: Overcoming Barriers to Housing in Greater Boston* (Boston, MA: Pioneer Institute for Public Policy Research & Rappaport Institute for Greater Boston, January 2003), 38–39, <http://www.pioneerinstitute.org/pdf/wp21.pdf>.

<sup>13</sup> Kriesberg, interview.

<sup>14</sup> Penniman, *Building Better: Recommendations for Boston’s Inclusionary Development Policy*, 17.

<sup>15</sup> Dillon, interview.

<sup>16</sup> Noah Maslan, in-person interview, February 24, 2012.

<sup>17</sup> Kriesberg, interview.

<sup>18</sup> Tsipis, interview.

<sup>19</sup> Burling, interview; Holly Schroeder, phone interview, February 23, 2012.

<sup>20</sup> Maslan, interview.

<sup>21</sup> *Leading the Way I Completion Report - Boston’s Housing Strategy FY 2001-2003* (City of Boston, 2003), 6, [http://www.cityofboston.gov/Images\\_Documents/LTW\\_I\\_Completion\\_Report\\_tcm3-7916.pdf](http://www.cityofboston.gov/Images_Documents/LTW_I_Completion_Report_tcm3-7916.pdf).

<sup>22</sup> “Neighborhood Housing Trust” (City of Boston, 2010), 7, <http://www.cityofboston.gov/dnd/pdfs/NHT.pdf>.

<sup>23</sup> Burling, interview.

<sup>24</sup> Paul Campos, phone interview, February 13, 2012.

<sup>25</sup> Schroeder, interview.

<sup>26</sup> Susan Allen, in-person interview, February 22, 2012.

<sup>27</sup> Anonymous private developer in Boston, in-person interview, February 29, 2012.

<sup>28</sup> Rawson, interview.

<sup>29</sup> Tom Calahan, phone interview, March 8, 2012.

## 08. CONCLUSION

Inclusionary zoning began in U.S. suburbs in the 1970s, after affluent, white urban residents fled cities for suburbs in what came to be known as ‘white flight,’ and the Civil Rights Movement raised awareness about racial inequality. Cities passed linkage ordinances in the 1980s, and by the 1990s, had also turned to inclusionary programs, both of which were attempts to mitigate displacement stemming from gentrification. Now, IZ also exists in Canada, Western Europe, Australia, India, and South Africa. In the United States, housing is a commodity delivered to consumers by the private market. Thus, affordable housing has tended to be seen as separate from market-rate housing. IZ is a strategy to produce affordable housing that harnesses the private sector’s primary role in housing production.

Despite declining home values stemming from the recent bursting of the speculative housing bubble, housing unaffordability continues to be a problem for an increasing number of Americans, especially among lower-income groups. This is in part due to stagnating wages, production shortfalls, changing cultural values, and increasing demand for rental housing. Cities and metropolitan regions located coastally – particularly in California, New England, and the Mid-Atlantic – have historically had an expensive housing stock. Through interviews with 24 municipal employees, non-profit housing advocates, private real estate developers, and legal experts, this report gained an understanding of how inclusionary ordinances function in three of the country’s most expensive housing markets: Boston, Los Angeles, and San Francisco.

Inclusionary zoning was originally envisioned as a way to ‘open up the suburbs’ to poor, minority residents of central cities. The focus of this report was the flexibility of IZ, and whether that flexibility was valid and able to achieve the original goal, socioeconomic integration. IZ’s default option is on-site construction, where developers of market-rate residential projects must include a certain percentage of units as affordable to households earning incomes lower than specified ceilings, designated as a percentage of area median income (AMI). The most common alternative to on-site construction is payment of in-lieu fees, where developers pay money, either on a per-unit or per-square footage basis, instead of building any affordable units. Another means of compliance is off-site construction, where developers build two separate projects, one market-rate, and the other affordable.

Cities should allow for flexibility within their inclusionary ordinances. On-site construction is beneficial, because the affordable units are tangible and created efficiently. However, on-site construction should not be rigidly enforced, because there are no proven benefits of mixed-income



housing. Additionally, the on-site affordable units tend to be studio or 1-bedroom apartments located in high-rise downtown towers, which do not adequately meet the needs of lower-income families. Thus, off-site construction should be permitted, at the discretion of city government, not private developers. Imposing geographic limits on the location of the off-site units is an excellent strategy to ensure that neighborhoods, rather than buildings, are economically diverse – so low-income residents have a chance to live in many places across a city, but not necessarily in a building with more affluent occupants.

There are also benefits of allowing developers to pay fees in-lieu of constructing any affordable units. One of the debates about the validity of IZ that struck the deepest chord with me was its inability to provide housing at a deep enough income level to meet the needs of a city's most vulnerable populations – residents earning very-low and extremely low incomes. IZ has functioned and continues to function as a moderate-income housing production program. In-lieu fees tend to be used to provide gap financing for 100% affordable projects, which usually serve low-income, very low-income, and even extremely low-income populations – and also tend to be located in poorer neighborhoods. From this perspective, IZ is an important tool to provide housing at a range of income levels, but also serves to increase the concentration of poverty in certain parts of cities.

This is why flexibility is important, but should be controlled. Neither extreme is desirable: if all units are built on-site due to inflexibility, IZ will only serve the moderate-income portion of a city's population. However, if all developers are allowed to buy out of the obligation, then little housing will be built that is affordable to moderate-income populations. Thus, it is also essential to set in-lieu fees at a high enough level so that when developers do pay them, they are equivalent to the cost of creating a comparable number of units. Furthermore, multiple developers should be permitted to combine inclusionary requirements from multiple projects and satisfy the entirety with a single off-site project. By aggregating funds in this way, it may be possible to avoid a geographic over-concentration of affordable housing in specific neighborhoods. Socioeconomic integration at the building level has not been proven to yield definitive benefits for lower-income residents of mixed-income projects, but locating some affordable housing in more diverse neighborhoods can increase access to different jobs and schools.

The production statistics – at least, those that are available – show that the old adage is true: IZ is not a panacea for a community's affordable housing needs. Many other things are necessary to truly deliver enough affordable housing to alleviate housing burdens in cities across the country. However, without



the unit contribution of IZ, where would we be? More households would be paying too much for housing. IZ may not deliver a lot of affordable housing, but it is better than nothing. By providing controlled flexibility, IZ can be used to create some units affordable to moderate-income populations as well as money to fund projects to house more vulnerable populations.



## APPENDIX A: SAMPLE INTERVIEW QUESTIONS

### **General experience with IZ**

1. What has been your experience with your city's inclusionary ordinance?
2. In general, how do others in your profession view your city's inclusionary ordinance?

### **History of IZ**

3. Do developers receive any special benefits in exchange for building affordable units? Have these benefits changed over time, and if so, how? Who was involved in negotiating these changes?
4. How has the amount of in-lieu fees required changed over time? Who changed them, and what was their rationale? Who has opposed or supported these changes?
5. Has your city become more or less permissive in allowing developers to buy out of the obligation and pay fees in lieu of constructing affordable units?

### **Outcome of IZ**

6. Do you think the inclusionary ordinance significantly increases the production of affordable units in your city? Do you have any data about this?
7. Do you know what happens with the money collected as in-lieu fee payments?
8. Can you speak to any geographic patterns of the projects built off-site or financed with in-lieu fees?
9. Does it seem that the city is prioritizing affordable housing at the building, neighborhood, or city-wide level? None of the above?

### **General views about IZ**

10. Does it seem that the city's goal for its inclusionary ordinance is to foster social integration or produce affordable units? Do you think the in-lieu fee option supports social integration?
11. Do you think the inclusionary ordinance places an unfair burden on developers to provide affordable housing? Why or why not?
12. Do you think developers should be allowed to buy out of the obligation and pay fees in lieu of constructing affordable units? Why or why not?



**Views looking into the future of IZ**

13. What modifications, if any, would you make to the provisions for in-lieu fees? For example, would you raise or lower the fee amount? Change how the fees are assessed?
14. Are there any changes you would make to the inclusionary ordinance?
15. How has the recent recession impacted the inclusionary ordinance?
16. Is there anyone else you recommend that I speak to about the inclusionary ordinance?

## APPENDIX B: LIST OF INTERVIEWEES

Name	Date of Interview	Organization	Title	Jurisdictional Experience
<b>Yanni Tsipis</b>	12/4/11	Colliers International	Development Consultant	Boston
<b>Dharmena Downey</b>	12/8/11	Fenway Community Development Corporation	Executive Director	Boston
<b>Sheila Dillon</b>	1/26/12	City of Boston, Mayor's Office	Housing Advisor	Boston
<b>Blake Lamb</b>	1/20/12	City of Los Angeles, Department of City Planning	City Planner	Los Angeles
<b>Anonymous</b>	1/4/12	City of Santa Monica	---	Los Angeles
<b>Mike Rawson</b>	2/8/12	The Public Interest Law Project	Co-Director	California
<b>James Burling</b>	2/6/12	Pacific Legal Foundation	Director of Litigation	California
<b>Paul Silvern</b>	1/13/12	HR&A Advisors	Vice President	Los Angeles
<b>Tim Colen</b>	1/30/12	San Francisco Housing Action Coalition	Executive Director	San Francisco
<b>Chandra Egan</b>	1/31/12	City of San Francisco, Mayor's Office of Housing	Inclusionary Housing Program Manager	San Francisco
<b>Paul Campos</b>	2/13/12	Building Industry Association - Bay Area Chapter	Sr VP of Governmental Affairs and General Counsel	Bay Area
<b>Peter Cohen</b>	2/14/12	Coalition of Community Housing Organizations	Executive Director	San Francisco
<b>Susan Allen</b>	2/22/12	The Drew Company	Executive Vice President	Boston
<b>Joe Kriesberg</b>	2/23/12	Massachusetts Association of Community Development Corporations	President	Boston
<b>Holly</b>	2/23/12	Building Industry	CEO	Los Angeles



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<b>Schroeder</b>		Association - LA/Ventura Chapter		
<b>Greg Vilkin</b>	2/24/12	Macfarlane Partners	Managing Principal and President	Los Angeles
<b>Noah Maslan</b>	2/24/12	Urban Edge	Director of Real Estate Development	Boston
<b>Anonymous</b>	2/29/12	a private development company	---	Boston
<b>Kenan Bigby</b>	3/1/12	Trinity Financial	Project Manager	Boston
<b>Tom Callahan</b>	3/8/12	Massachusetts Affordable Housing Alliance	Executive Director	Boston
<b>Naomi Guth</b>	3/8/12	Los Angeles Department of City Planning	City Planner	Los Angeles
<b>Isela Gracian</b>	3/9/12	East Los Angeles Community Corporation	Associate Director	Los Angeles
<b>Kathy Brown</b>	3/14/12	Boston Tenant Coalition	Coordinator	Boston
<b>Shirley Kressel</b>	3/21/12	Alliance for Boston Neighborhoods	Cofounder	Boston



# Appendix C: Summary of Flexible Alternatives

	Boston	Los Angeles					San Francisco
		Central City West Specific Plan	City of Los Angeles*	Santa Monica	West Hollywood	Pasadena	
<b>On-site set-aside requirement</b>	15%	15%	N/A	20% for projects of 4-15 units; 25% for projects of 15+ units	20%	15%	15%
<b>In-lieu fees?</b>	Yes, always. Current fee is \$200,000 per affordable unit	Yes, updated annually. The 2012 fee for a Very Low-Income unit was \$146,354; the fee for a Low-Income unit was \$114,788	Maybe	Yes. The fee amounts adopted as of June 2011 are \$27.35 per square foot for apartments and \$31.94 per square foot for condominium projects. However, developers of different types of projects pay different amounts of this fee.	Yes. As of 2011, the per-square-foot fee varied between \$11.51 for a 2-unit project and \$24.68 for a 10-unit project	Yes. As of FY 12, ranges from a minimum of \$1.09 per square foot to a maximum of \$57.86 per square foot. The fee varies by geographic subarea (the city is divided into 4), project size, and tenure type	Yes, with a 20% set-aside. Fee is supposed to be updated annually, but has not been since 2008. Fee for a 2 bedroom unit in 2008 was set at \$334,478
<b>Off-site construction?</b>	Yes	Yes	Maybe -- with 110% of the on-site requirement. Must be located within the same Community Plan area.	Yes, with an additional set-aside equivalent to one-quarter of the on-site requirement. Must be built 1/4 mile from market-rate units, though developers can seek approval and make a case for extending this radius up to 1 mile.	Yes	Yes	Yes, with a 20% set-aside and 1 mile from market-rate project
<b>Process for selecting alternatives</b>	Negotiating with the Boston Redevelopment Authority	Specific Plan Variance process	N/A	Projects with 2 or 3 units may choose to pay the fee	Developers of projects with ten or fewer units can either pay a fee or a combination of construction and payment. Developers of projects with 11+ units may apply to build off-site under certain circumstances.	At the discretion of the City Manager or Assistant City Manager. Projects that displace any existing affordable units must build on-site.	Sponsor of the project decides
<b>Money collected</b>	\$31.4 million	\$824,418 (from 1 project, for 9 units)	N/A	\$8,662,944 (between FY 1998-99 and FY 2004)	Unknown	\$15,875,358 (as of February 2010)	\$48,784,785 (as of FY 2010-11)
<b>Affordable units created (on-site)</b>	Unknown	660	N/A	839 (between FY 98/99 and FY 10/11)	Unknown	Unknown	1,052
<b>Affordable units created (off-site/with in-lieu fees)</b>	Unknown	191	N/A	Unknown	Unknown	Unknown	1,086 with in-lieu fees; off-site unknown
<b># of projects paying in-lieu fees/building off-site</b>	49	5 building off-site, 1 paying in-lieu fees	N/A	175 (74% of total multifamily projects approved between FY 98/99 and FY 09/10)	Unknown	36	39 paying in-lieu fees
<b># of projects building on-site affordable units</b>	Unknown	20	N/A	58	Unknown	Unknown	115
<b>Projects receiving in-lieu fees</b>	49	Unknown	N/A	Unknown	Unknown	Unknown	12
<b>Compensating benefits?</b>	No, but only applies to projects seeking zoning relief	City and state voluntary density bonus provisions	City and state voluntary density bonus provisions	State voluntary density bonus provisions	State voluntary density bonus provisions; Parking reductions	State voluntary density bonus provisions	No

\*Proposed, never enacted



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